

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





75-1208

B1  
P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1208

UNITED STATES OF AMERICA,

*Appellee,*

—against—

VINCENT PAPA,

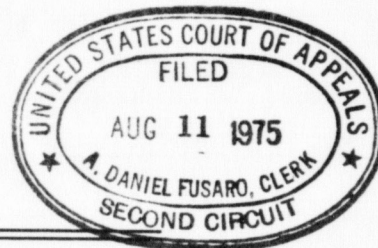
*Appellant.*

APPELLANT'S APPENDIX

FISHER, ROSNER and SCRIBNER  
*Attorneys for Appellant*  
401 Broadway  
New York, New York 10013  
(212) 925-8844

*Of Counsel:*

IVAN S. FISHER  
JEFFREY DWIGHT ULLMAN



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D. C. Form No. 103  
CRIMINAL DOCKET

A 1  
JUDGE BRIEFANT

74 CRIM. 251

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
VS.	John P. Cooney, AUSA
VINCENT PAPA-1 & 2	264-6348
VICTOR EUPHEMIA-1&3	
ANTHONY STANZIONE-1&2	
JACK LOCORRIERI-1	
VINCENT PAPA, Jr.-1	For Defendant:
JOHN DOE, a/k/a Petey Box-1	

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
977					
Fine,					
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court, 21					
Witnesses, 173, 4, 846, 812, 841(a)					
(1), (b)					
Consp. to viol. Fed. Narcotic Laws (Ct. 1)					
Distr. & possess. w/intent to distr. Heroin, I. (Cts 2&3)					
(Three Counts)					

DATE	PROCEEDINGS
1/18/74.	Application to seal granted: B/Ws granted as to defts. Papa, Stanzone, Locorrieri and John Doe, a/k/a Petey Box. So ordered Motley, J.
1/19/74	Indictment ordered unsealed. Motley, J.
	Vincent Papa (att. present) Pleads not guilty. Motions returnable in 10 days. Deft. remanded.
	Deft. Stanzone (att. present) Pleads not guilty. Bail fixed at \$500,000. security with \$100,000. cash security carried over from indictment
	73Cr994.
	V. Papa, Jr. (att. present) Pleads not guilty. Bail fixed at \$50,000. P.R.B. secured by \$5,000. cash to be posted by Thur. 3-21-74 no later than 5P.M. Bail limits to include SDNY & EDNY.
	(Over)

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
3-19-74	Deft. Peter Giamarino, a/k/a Percy Box (atty. pres.) Pleads not guilty. Bail fixed at \$20,000. P.R.B. secured by 10%. to be posted by Thru. 3-21-74 no later than 5 P.M. Bail limits to include SDNY & EDNY. Case assigned to Judge Briant for all purposes. Motley, J.		
3-19-74	V. PAPA - Filed affdvt. for W/H/C Ad Pros. Writ issued, Ret. 3-10-74.		
3-19-74	V. EUPHEMIA - Filed affdvt for W/H/C Ad Pros. writ issued, ret. 3-22-74.		
3-21-74	VINCENT PAPA - Filed appearance bond in the amount of \$50,000. secured by \$5,000. cash, Receipt # 33985.		
3-21-74	PETER GIAMARINO - Filed appearance bond in the amount of \$20,000. secured by \$2,000. cash, Receipt # 33989.		
3-25-74	ANTHONY STANZIONE - Filed P.R.B. in the amount of \$5000,000. secured by \$100,000. and \$100,000. surety posted in 73 Cr.994 to apply. To include Dist. of N.J.		
3-25-74	ANTHONY STANZIONE - Filed P.R.B. in the amount of \$300,000. To include Dist. of N.J.		
3-22-74	VICTOR EUPHEMIA - (Atty Present) Deft. Produced on writ. PLEADS not guilty. 10 days for motions. case referred to BRIANT, J. Deft. Remanded. POLLACK, J.		
3-25-74	ANTHONY STANZIONE - Filed Appearance bond in the Amt. of \$100,000. to include Dist. of N.J. Public Service Mutual Insurance.		
3-26-74	ANTHONY STARZIONE - Filed notice of appearance by Nancy Rosner 401 B'Way, N.Y.C. 925-8844.		
3-26-74	VINCENT PAPA - Filed notice of appearance by T. Rosenberg, 31 Smith St., B'kly., N.Y. 858-0587. Cont'd on page 3		

## DOCKET

DATE	FILINGS—PROCEEDINGS	AMOUNT PAID RECEIVED
3-26-74	VINCENT PAPA, JR. - Filed notice of appearance by Frank Lopez, 31 Smith St., B'klyn, n.y. 11201 237-9500.	
4-1-74	VICTOR EUPHEMIA - Filed CJA #20; Appointment of counsel - Irving Cohen, 200 B'Way - NYC - 10007 - BE-3-3330. BRIEANT, J.	
4-5-74	VICTOR EUPHEMIA - Filed defts. financial affdvt.	
4-3-74	ANTHONY STANZIONE - Filed remand dtd. 3-19-74.	
4-17-74	Pre-Trial conf. held.	
4-24-74	PETER GIAMARINO - Filed affdvt and notice of motion for discovery & inspection.	
4-24-74	" " Filed deft. memo of law.	
5-3-74	PAPA - Filed defts. notice of motion for B/P.	
5-3-74	PAPA - Filed defts. memo of law.	
5-17-74	VINCENT PAPA - Filed affdvt and motion to introduce evidence. (Polygraph)	
5-17-74	VINCENT PAPA - Filed affdvt and motion to introduce evidence. (seizure of money)	
5-17-74	VINCENT PAPA - Filed affdvt and motion to dismiss indictment.	
6-13-74	VINCENT PAPA - Filed Gov'ts Affidvt and Memorandum of Law in opposition to Deft's motion to dismiss indictment.	
6-14-74	VINCENT PAPA - Filed Affidvt and Notice of Motion to suppress.	
7-23-74	Filed transcript of record of proceedings dated 3-19-74.	
9-3-74	Filed Gov't Bill of Particulars.	
9-9-74	Filed Pltff's Notice of Readiness for Trial on or after 9-17-74.	
9-12-74	Filed Pltff's Supplemental Bill Particulars.	



DATE	FILINGS--PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
9-21-74	JOSEPH GLAMARINO-a/k/a/ Petey Box - Filed Notice of Motion for an Order Dismissing the Indictment and affdvt of Stephen R. Laifer, in support of said Motion.	
9-23-74	VINCENT PAPA. Filed Affdvt for Writ of Habeas Corpus - Ret. 10-24-74	
9-25-74	VINCENT PAPA. Filed Affdvt for Writ of Habeas Corpus for one Joseph Di Napoli - Ret. 10-24-74	
1-12-74	ANTHONY STANZIONE. Filed Def't's Affdvt and Notice of Motion to suppress.	
1-12-74	" " - Filed Def't's Memorandum of Law Re. Motion to Suppress.	
1-13-74	VINCENT PAPA. Filed Writ of Habeas Corpus directed to Warden, Fed. Det. House, West St. NYC - Writ satisfied 11-7-74 --BRIEANT, J.	
11-7-74	Filed transcript of record of proceedings, dated SEPT 24-74	
12-13-74	Vincent Papa-Filed Def't's reply Memo. of Law.	
1-13-75	VINCENT PAPA. Filed MEMO ENDORSEMENT on Def't's affdvt and motion to introduce evidence (Beltragh) filed 5-17-74. MOTION DENIED, see transcript of hearing this date. SO ORDERED --BRIEANT, J. (m/n)	
1-13-75	VINCENT PAPA. Filed MEMO ENDORSEMENT on Def't's affdvt and motion to dismiss indictment filed 5-17-74. Motion withdrawn based on representations by the Government in open court this date. See Transcript. SO ORDERED. BRIEANT, J.	
1-13-75	VINCENT PAPA- Filed Def't's application for an order providing for an evidentiary hearing.	
1-13-75	VINCENT PAPA. Filed MEMO ENDORSEMENT on Def't's above order. Motion withdrawn on the basis of representations made by the Government in open Court this date. See Transcript. SO ORDERED. ---BRIEANT, J. (m/n 1-14-75)	
1-16-75	Filed manila envelope containing Grand Jury Testimony. Ordered sealed. Briant, J.	

(Cont'd on Page #5)



\* 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	D. Jud.
1-16-75	VINCENT PAPA= Filed Deft's Memorandum of Law.	
1-16-75	VINCENT PAPA= Filed Pltff's Memorandum in Opposition to Deft's motion to dismiss the Indictment.	
1-16-75	VINCENT PAPA= Filed Deft's Affidvt of Wallace Musoff in re. to the affidvt submitted by Ivan S. Fisher, Esq, dated 10-21-74.	
1-16-75	VINCENT PAPA= Filed Affidvt and Notice of Motion by Deft, for an order dismissing the indictment against the deft.	

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA :

-v- :

VINCENT PAPA, VICTOR EUPHEMIA, :  
ANTHONY STANZIONE, JACK LOCORRIERI, :  
VINCENT PAPA, Jr., and JOHN DOE :  
a/k/a "Petey Box", (Lawrence) :

Defendants. :

INDICTMENT

74 Cr.

-----x  
The Grand Jury charges that:

1. From on or about December 1, 1967, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, VINCENT PAPA, VICTOR EUPHEMIA, ANTHONY STANZIONE, JACK LOCORRIERI, VINCENT PAPA, Jr., and JOHN DOE a/k/a "Petey Box", the defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully, and intentionally, did combine, confederate and agree together and with each other to violate Sections 173, 174, 812, 841(a)(1), and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants and co-conspirators unlawfully, wilfully and knowingly would receive, conceal, keep, sell and facilitate the transportation, concealment and sale of a quantity of narcotic drugs, the exact amount thereof being to the Grand Jury unknown, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

3. It was a further part of said conspiracy that the said defendants and co-conspirators unlawfully, wilfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances, the exact amount to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

#### OVERT ACTS

In pursuance of said conspiracy and to effect the objects thereof, the following overt acts, among other, were committed in the Southern District of New York and elsewhere:

(1) In or about January, 1968, the defendants ANTHONY STANZIONE and VICTOR EUPHEMIA had a conversation with two individuals in the vicinity of 117 W. 118th Street, New York, New York;

(2) In or about December, 1969, the defendants VICTOR EUPHEMIA and JACK LOCORRIERI had a conversation with an individual in the vicinity of 1840 Loring Place, Bronx, New York;

(3) In or about June, 1970, the defendant JACK LOCORRIERI delivered a suitcase containing approximately two kilograms of heroin to an individual in the vicinity of Ditmar's Car Service, 38-09 Ditmars Blvd., Queens, New York;

(4) In or about June, 1970, the defendant VINCENT PAPA, Jr., delivered approximately one kilogram of heroin to an individual in the vicinity of 37th St., and 23rd Avenue, Queens, New York;



(5) In or about July, 1970, the defendant JOHN DOE, a/k/a "Petey Box" received approximately one half kilogram of heroin in the vicinity of the Astoria Colts Social Club, 41-16 Ditmars Blvd., Queens, New York;

(6) In or about January, 1972, the defendants VINCENT PAPA and ANTHONY STANZIONE had a conversation concerning two suitcases in the vicinity of Ditmar's Car Service, 38-09 Ditmars Blvd., Queens, New York;

(7) In or about January, 1972, the defendant ANTHONY STANZIONE delivered two suitcases containing approximately one hundred and sixty pounds of heroin to an individual in the vicinity of 21-34 37th Street, Queens, New York;

(8) On or about February 3, 1972, the defendant, VINCENT PAPA had in his possession \$967,450 in cash in the vicinity of 1908 Bronxdale Avenue, Bronx, New York; and

(9) In or about March, 1972, the defendant ANTHONY STANZIONE, went to 907 43rd Avenue, Queens, New York.

(Title 21, United States Code, Sections 170, 174 and 846)

#### SECOND COUNT

The Grand Jury further charges that:

On or about the 14th day of February, 1972 in the Southern District of New York, VINCENT PAPA, and ANTHONY STANZIONE the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I controlled substance, to wit, approximately 160 pounds of heroin hydrochloride.

(Title 21, United States Code, Sections 801, 841(a)(1) and 841(b)(1)(B) and Title 18, United States Code, Section 2).

THIRD COUNT

The Grand Jury further charges that:

On or about the 25th day of January, 1972 in the Southern District of New York, VICTOR EUPHEMIA, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I controlled substance, to wit, approximately one kilogram of heroin hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B).)

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Foreman

---

PAUL J. CURRAN  
United States Attorney

DOCKET NO. 74 Cr. 1007CLB

In the presence of the attorney for the government the defendant appeared in person on this date 5 MONTH 14 DAY 1975 YEAR

**COUNSEL** ☐ WITHOUT COUNSEL However, the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.  
☒ WITH COUNSEL Ivan Fisher (Name of counsel)

**PLEA** Defendant produced in Court on a Writ of Habeas Corpus Ad Prosequendum.  
☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☒ NOT GUILTY

**FINDING & JUDGMENT** There being a ~~verdict~~ verdict of ☐ NOT GUILTY. Defendant is discharged.  
☒ GUILTY.  
 Defendant has been convicted as charged of the offense(s) of distribute and possess with intent to distribute heroin XL (Title 21, U.S. Code, §§812, 841(a)(1) and 841(b)(1)(A) and Title 18, U.S. Code, §2.); conspiracy so to do. [Title 21, U.S. Code, §§ 173, 174 and 846.]

**SENTENCE OR PROBATION ORDER** The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THIRTY (20) YEARS on count 1; FIFTEEN (15) YEARS on count 2, to run concurrently with each other.  
and  
 Defendant is Fined \$10,000.00 on count 1 and \$25,000.00 on count 2. TOTAL FINE of \$35,000.00 is to be paid within 30 days.

**SPECIAL CONDITIONS OF PROBATION** Pursuant to the prob provisions of Section 841 of Title 21, U.S. Code, defendant is placed on Special Parole on count 2 for a period of THREE (3) YEARS, to commence upon expiration of confinement.  
 This sentence is to run concurrently with the sentence imposed by Judge Travie in the Eastern District of New York  
 Writ satisfied.

**ADDITIONAL CONDITIONS OF PROBATION** In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set forth in Rule 33 of the Federal Rules of Criminal Procedure, as amended, shall apply. The court may change the conditions of probation, reduce or extend the period of probation, and may terminate the probation period or award a maximum probation period of five years permitted by law, may issue a warrant and remove the defendant from the community during the probation period.

**COMMITMENT RECOMMENDATION** The court orders commitment to the custody of the Attorney General and recommends,  
 It is ordered that the Clerk deposit a certified copy of this judgment and commitment to the U.S. Marshal at the other qualified only.

SIGNED BY

U.S. Marshal

U.S. Marshal

Charles L. Brient, Jr. DATE May 14, 1975



**GENERAL  
CONDITIONS  
OF  
PROBATION**

Where probation has been ordered the defendant shall, during the period of probation, conduct himself as a law-abiding, industrious citizen and observe all conditions of probation prescribed by the court. **TO THE DEFENDANT - You shall:**

- (1) refrain from violation of any law (federal, state, and local) and get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer;
- (2) associate only with law-abiding persons and maintain reasonable hours;
- (3) work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability. (When out of work notify your probation officer at once, and consult him prior to job changes);
- (4) not leave the judicial district without permission of the probation officer;
- (5) notify your probation officer immediately of any change in your place of residence;
- (6) follow the probation officer's instructions and report as directed.

The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

May 19, 1975:

Received this Judgement & commitment and forwarded a copy to the warden or Federal Detention Hdqts, 427 West Street, NYC, the institution in which the defendant is presently incarcerated. This sentence to be served concurrently with a sentence being served at that facility.

*James E. Farnsworth*  
United States Marshal

RETURN

Southern District of New York

I have executed the within Judgment and Commitment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

Defendant noted appeal on \_\_\_\_\_

Defendant released on \_\_\_\_\_

Mandate issued on \_\_\_\_\_

Defendant's appeal determined on \_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, the institution designated by the Attorney General, with a certified copy of the within Judgment and Commitment.

United States Marshal

By \_\_\_\_\_

Deputy Marshal

STATEMENT OF JOSEPH RAGUSA TAKEN AT NEW YORK REGIONAL OFFICE ON JULY 17, 1972 AT APPROXIMATELY 11:00 P.M. IN THE PRESENCE OF SPECIAL AGENTS JOSEPH P. SALVENINI, SIGMUND WUTKIEWITZ, KEVIN M. THOMPSON AND RAYMOND TRIPP RELATIVE TO CERTAIN HEROIN TRANSACTIONS WITH VINNY PAPPA et al. *JR*

About three years ago I met a man I know know as VINNY PAPPA, I met him through a man called JACK. I don't know JACK'S last name but I think he is Italian and is about 45 years old and about 6 feet tall and about 200 pounds. I was a good friend of JACK'S and so was VINNY PAPPA. I used to dispatch at the Ditmars Car Service and JACK used to ~~call me~~, that's how I knew JACK and wound up meeting VINNY PAPPA. *JR*

One Day about two years ago JACK approached me. He wanted me to make a few deliveries of HEROIN. The first time he approached me he told me what HEROIN was. Before this time I did not know what HEROIN looked like and I had never even seen HEROIN. At this time JACK asked me if I wanted to make extra money. JACK said he would give me \$500.00 a month if I would make one delivery of HEROIN each month and a few pickups of HEROIN money. I agreed to this arrangement.

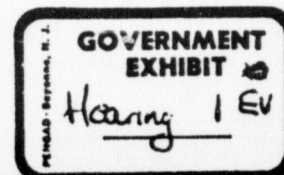
I agreed to this arrangement and JACK gave me a small suitcase which had about two kilograms of HEROIN, a scale and some MANITA. JACK asked me to hold this for him and every so often he would tell me what and how much to deliver.

Just about every time I delivered HEROIN I would pick up money. At times I would even make extra trips to pick up HEROIN money. These deliveries went on for about a year untill suddenly JACK disappeared. At the time JACK disappeared I still had about two thousand dollars of his and VINNY PAPPA'S money which I kept. During this whole time VINNY PAPPA would come in to Ditmars Car Service and talk at length to JACK and say hello to me.

In January of 1972 VINNY PAPPA approached me and asked me if I still wanted to make extra money. I asked VINNY PAPPA how much money and he said five thousand dollars. I agreed and VINNY PAPPA said that all I would have to do would be to hold two suitcases of HEROIN and that every once in a while someone would come up and pick up some of the HEROIN. VINNY PAPPA told me that the guy that would give me the HEROIN would be the same guy that would pick up the HEROIN.

On a night early in 1972 I made arrangements with VINNY PAPPA and the guy in question for the delivery of the HEROIN. ( I don't recall the guy in question's name but I believe he was about 5'7" - 5'8" tall sort of heavy set with a dumb looking face). VINNY PAPPA introduced me to the guy and said that he would be the one to give me the HEROIN and he would be the one to pick up the HEROIN and only to give the HEROIN back to him. There was no doubt at all during this whole conversation that we were talking about HEROIN. This meeting took place around January - 1972 at the Ditmars Private Car Service in Astoria Queens.

Eventually the way the delivery of HEROIN took place was VINNY PAPPA introduced me to the guy in question and then he walked away after telling me to follow his man. This guy went to his car and drove to a side street. I followed him and I picked up the two suitcases of HEROIN from him at 37th Street off of Ditmars Blvd. in Queens. I then took the HEROIN in the two suitcases to 522 West 188th Street in Manhattan. I stashed the two suitcases in the closet. *JR*





A few weeks later, ( Still in January of 1972 ), the guy who VINNY PAPPA introduced to me, and who gave me the HEROIN, came back to me. He already had my Astoria Queens address from VINNY PAPPA ( I had given VINNY PAPPA 907 43rd Avenue in Astoria as my address ).

The first time VINNY PAPPA'S man came back to me he said, Where's the HEROIN. I walked to my closet and took out one of the suitcases and gave it to him. He took it into the bathroom and a few minutes later he came back out of the bathroom and gave me back the suitcase. I put this suitcase back in the closet with the other suitcase.

I estimate that each suitcase weighed about fifty pounds apiece. I think from conversations with VINNY PAPPA and his man, as well as from my own estimation, that there were more than fifty kilograms of HEROIN between the two suitcases.

I eventually was able to get into one of the suitcases and it was all full of HEROIN, but some of the packages were broken. The locks on the suitcase I got into were left on the combination and that's how I was able to get at the HEROIN. This is how I got the HEROIN that I sold to Agent JOE SALVEMINI. At first PAPPA and his guy didn't know I took the HEROIN. VINNY PAPPA'S guy came to me about three times to take HEROIN from the suitcases before VINNY PAPPA got busted. The last time he came was after PAPPA got busted and then he took all of the remaining HEROIN. At that time I remember this guy asking me how to get to Astoria Blvd. from Long Island City.

I wound up getting five thousand dollars from VINNY PAPPA'S man for my part in these HEROIN transactions. VINNY PAPPA'S guy brought me one thousand dollars when he picked up the second load of HEROIN. I got another two thousand dollars when he picked up the last load of HEROIN at the end of March. This was because I still had two thousand dollars of JACK'S and VINNY PAPPA'S money already.

The HEROIN I sold to Agent JOE SALVEMINI came from the suitcase I got into in the middle of March - 1972, before VINNY PAPPA'S man came and took what was left. I got this HEROIN by taking some from each of the ten broken packages and then mixing some lactose with it.

I met Agent JOE SALVEMINI through a man I know as TONY and I met TONY through a broad I know as BUNNY. I met BUNNY through my brother in law ROBERT. BUNNY lives around 44th Street in Astoria or Woodside, Queens, near the Long Island Expressway. She introduced me to TONY for the purpose of selling HEROIN.

I think TONY deals in heavy swag. I also met a man I know as COOKIE through TONY, and this was also for the purpose of selling HEROIN.

My brother in law GEORGIE (GEORGE BOODY) came into these HEROIN deals because I didn't want to work them by myself, and I asked him to go with me.

When COOKIE and I discussed the HEROIN deals he said he could sell the HEROIN for me but that it would take two or three days. That's how I eventually wound up meeting Agent JOE SALVEMINI and GEORGE and I sold the HEROIN to him. .

After I sold the HEROIN to Agent JOE SALVEMINI it was a few days later when VINNY PAPPA'S man came and took the rest of the HEROIN. At the time he came about twenty to twenty two kilograms of HEROIN were left. The HEROIN looked all Brown, all the same. I had been told by VINNY PAPPA that the HEROIN could take a Ten Hit but I didn't know Ten was the highest it could be hit I thought HEROIN could be hit twelve times.

*J.R.*

After VINNY PAPPA's guy came for the last of the HEROIN in late March of 1972, I was never again contacted by him or his man.

Prior to the taking of this statement, I was advised of my constitutional rights by Agent Kevin Thompson of the Bureau of Narcotics. This typewritten statement is an accurate transcript of a handwritten statement I dictated to Agent JOE SALVEMINI earlier this evening and is a fair account of my present recollections of the HEROIN transactions in question.

I HAVE READ THIS STATEMENT WHICH CONSISTS OF THREE PAGES, SIGNED EACH PAGE AND INITIALED ALL ERRORS AND CORRECTIONS. NO PROMISES OR THREATS HAVE BEEN MADE TO ME AND I HAVE NOT BEEN MISTREATED IN ANY WAY. EARLIER THIS EVENING I WAS GIVEN THE OPTION OF GOING TO THE FEDERAL HOUSE OF DETENTION FOR THE NIGHT, BUT I HAVE ELECTED TO REMAIN AT BNDD HEADQUARTERS INSTEAD.

JOSEPH. RAGUSA

*Joseph Ragusa*

Mr. Leonard A. Vecchione

*Leonard A. Vecchione*

Joseph P. Salvemini

*Joseph P. Salvemini*

Kevin M. Thompson

*Kevin M. Thompson*

Raymond Tripp

*Raymond W. Tripp*

Sigmund Wutkiewitz

*Sigmund Wutkiewitz*

Richard C. Keckler

*Richard C. Keckler*

William E. Crawford

*William E. Crawford*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

JOSEPH RAGUSA

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: Criminal Folder No.  
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: 723,572  
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225 Cadman Plaza East  
Brooklyn, New York

July 18, 1972

GRAND JURY MINUTES

PRESENTED BY:

WILLIAM T. MURPHY, ESQ.,

Strike Force

REPORTED BY:

STEVEN DASH

WITNESS:

JOSEPH RAGUSA





1  
2 J O S E P H R A G U S A, called as a witness, having  
3 been duly sworn, testified as follows:

4 EXAMINATION BY

5 MR. MURPHY:

6 Q Would you tell us your name, sir?

7 A Joseph Ragusa.

8 Q Mr. Ragusa, would you give your date of birth?

9 A November 18, 1947.

10 Q Mr. Ragusa, anybody who testifies before a grand  
11 jury has a right under the Constitution not to incriminate  
12 himself. That means he doesn't have to answer a question.  
13 If he answers a question regarding a crime he has committed,  
14 it can be used in the discovery of evidence. Do you understand  
15 me?

16 A Yes, I do.

17 Q A person testifying before the grand jury has a  
18 right to assistance of counsel. He can have an attorney  
19 standing right outside the door with whom he can consult  
20 before he gives an answer to any question. If a man cannot  
21 afford an attorney, the court, not me, not the grand jury,  
22 but a judge of the court will appoint an attorney to repre-  
23 sent him and look out for the witness' interest.

24 Do you understand me?

25 A Yes, I do.

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Q Do you want an attorney here today?

3

A No, I do not.

4

5

Q Are you willing to answer questions even though you don't have to answer any questions?

6

A Yes.

7

8

9

10

Q I take it you are aware of some of the answers to these questions I will be asking you will open you to criminal liability; are you aware of that, that you can be prosecuted?

11

A I understand that.

12

13

Q Have I made any promises to solicit your testimony from you?

14

A None.

15

16

Q Any promises about a reduced sentence?

17

A None.

18

19

Q Or any promise that you wouldn't be prosecuted?

20

A None.

21

22

Q You were arrested last night; weren't you?

23

A Yes.

24

Q Do you know who arrested you?

25

A Joseph.

Q Do you know how to spell his last name?

A (spelling) S-a-l-v-a-n-i.

Q What is his job?

1

2

A Special Agent, Narcotics Bureau.

3

Q Federal Narcotics Bureau?

4

A Yes.

5

Q After you were arrested--could you tell us what time you were arrested?

6

7

A Approximately -- about 8:00 P.M.

8

Q After you were arrested, were you taken to the Federal Bureau of Narcotics headquarters in Manhattan?

9

10

A Yes, I was.

11

Q While you were there were you interrogated?

12

A Yes, I was.

13

Q Did you make a handwritten statement?

14

A Yes, I did.

15

Q After making the handwritten statement was the statement typed up?

16

17

A Yes, it was.

18

Q Have you seen it since then?

19

A Yes, I have.

20

Q I am going to show you a three-page typewritten statement. You tell me what that is.

21

22

Is that the typewritten statement that you saw last night?

23

24

(Hanging)

25

Do you have any trouble reading?



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A No, I do not.

Q What education have you had?

A High school equivalency diploma.

Q If somebody -- if these are not your words, tell us if somebody put the words down. In other words, did somebody put words into your mouth?

A These are my own words.

Q Will you take this pencil, and on the back of each page, mark your initials.

(Handing)

Q How many pages are there?

A Three pages.

Q What color is the ink you used to sign your name?

A Red.

MR. MURPHY: Can I have this three-page letter marked as Grand Jury Exhibit No. 1?

(Letter marked Grand Jury Exhibit No. 1 in evidence, as of this date)

Q This statement that you just read, that has been marked Grand Jury Exhibit No. 1, is it a true statement?

A Yes, it is.

Q Does it tell the complete story and every detail of your dealings with a man named Vincent Papa?

A To my knowledge, yes.

Q Every detail?

In one paragraph it says, "About three years ago I met Vincent Papa. I met him through a man called Jack."

It doesn't say anything about where you met Vinnie Papa or where you met Jack. So that is not a complete statement?

A No.

Q Is it a complete statement to the essential elements of your transactions with Vinnie Papa?

A Yes, it is.

Q When did you first meet Papa?

A About three years ago.

Q Can you tell us where and when you first met him, as best as you can remember?

A I met him at Ditmar's Private Car Service approximately three years ago through a friend and the owner of the Ditmar's Private Car Service, Jack Laccareri.

Q And what, if anything, did you do after you met Mr. Papa?

A Can you repeat that?

Q What, if anything, did you do after you met Mr. Papa? Did you have any business transactions with him?

A Not at first.



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Q Did you eventually have a business transaction with him?

A Yes, I did.

Q How long afterwards?

A Three years after.

Q How many?

A Three years.

Q Can you tell us what that business transaction consisted of?

A Two suitcases with heroin.

Q Can you tell us what you did with the two suitcases of heroin?

A I was asked to hold the suitcases and to let a certain man come up and take out whatever he wanted at any time that he wanted.

Q Who asked you to hold them?

A Vinnie Papa.

Q Who was the certain individual whom you were to allow to remove stuff from it whenever he wanted?

A I don't remember his name.

Q On how many occasions did anybody come to your apartment to pick up materials from inside the suitcases?

A A total of four times.

Q Did you ever look into the suitcases?

1  
2 A Yes, I did.

3 Q How did that come to pass?

4 A The suitcases had a combination lock on them and this  
5 third man came to pick up the stuff out of the suitcase.  
6 He hit on the right combination, and as I tried to open the  
7 suitcases, it flew open.

8 Q What was inside it? Describe what you saw inside  
9 the suitcase?

10 A Thirty or forty bags, plastic bags of heroin.

11 Q What did the heroin look like?

12 A Crayish white powder.

13 Q How do you know it was heroin?

14 A I just knew.

15 Q How did you know? Did anybody ever say it was  
16 heroin?

17 A I knew from previous experience through Jack Laccareri.  
18 I made deliveries for him and I picked up money for him of  
19 heroin.

20 Q Did you know it was heroin you were delivering  
21 at that time?

22 A He had told me, yes.

23 Q Jack had told you?

24 A Yes.

25 Q When did you have these previous dealings with

1  
2 Jack? During what period of time?

3 A Approximately three years ago for a total of about a  
4 year.

5 Q That would be in 1969?

6 A Right, to about 1970.

7 Q Something like that?

8 A Well, I can't remember the exact date.

9 Q But it was in between the calendar years 1969  
10 and 1970?

11 A Right.

12 Q What were you paid, if anything, to store the  
13 two suitcases?

14 A \$5,000.

15 Q When was the first time you stored a suitcase?

16 A The end of January.

17 Q Of what year?

18 A 1972.

19 Q When was the last time you stored a suitcase?

20 A The end of March.

21 Q Of this year?

22 A Yes.

23 Q You sold some heroin to Special Agent Salamini;  
24 didn't you?

25 A Correct.



1  
2 Q Did you know he was a narcotics agent at the  
3 time?

4 A No, I did not.

5 Q How much did you sell it to him for?

6 A \$12,000.

7 Q How much heroin did you sell him?

8 A About a half of kee.

9 Q What is a half of kee in grams?

10 A About a pound and a half.

11 Q Can you tell us, where did you get that pound  
12 or pound and a half of heroin from?

13 A From one of the suitcases that I was asked to hold by  
14 Vinnie Papa.

15 Q Do you just help yourself?

16 A When I asked him -- when the suitcases opened there  
17 were about ten bags that were ripped open. I took so much  
18 out of each bag and made one package of it.

19 Q Did Vinnie Papa know you were helping yourself  
20 to the heroin?

21 A No, he did not.

22 Q If he knew this it would be pretty tight for you?

23 A Yes, it would.

24 Q During the period of time from January 1972 to  
25 March 1972 how many times did you see Vinnie Papa?

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A Just the occasion when we made the transaction and one time after everything was all over.

Q Everything?

A After his man had come up to take out the suitcases.

Q Did there ever come a time when this man, whose name you didn't know, came and picked up the suitcases and removed them from the place where you were storing them?

A Yes, there was.

Q You say during the time from between the point where you got the suitcases and the time you took them away, this man visited the place four times?

A That is correct.

Q How many persons ever went into the place that you stored the suitcases to open them up?

A Just one.

Q Just one man? Is that the same man who brought the suitcases to your place where you were storing them?

A Yes.

Q Did you store them in your home?

A Yes, I did.

Q When did you get the \$5,000 from Vinnie Papa?

A On the first or second trip I got \$1,000.

Q First or second trip? What trip are you talking about?

1  
2 A When the man came over to the house to pick up the  
3 heroin, I got \$1,000, and then the last trip he gave me an  
4 additional \$2,000, which made a total of \$3,000. In other  
5 words, like at the time that I was working for Jack Laccareri,  
6 I still had some stuff left. I was supposed to pick up some  
7 money and give it to anyone. I held onto this money and never  
8 gave it to Vinnie.

9 Q You just washed out the deck? In other words,  
10 \$2,000 that you owed to Vinnie?

11 A Correct.

12 Q Was anybody else with you when Vinnie asked  
13 you to hold the suitcases?

14 A Only the man that came to pick up the heroin.

15 Q Where were you when Vinnie asked you to do that?

16 A In front of Ditmar's Private Car Service on Ditmas and  
17 Steinway Street.

18 Q Was Jack there?

19 A Jack had disappeared.

20 Q What do you mean "disappeared"?

21 A He just vanished.

22 MR. MURPHY: I have no further questions of this  
23 witness.

24 (Whereupon, the witness was excused and  
25 withdrew)



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA, :  
- against - : 72CR1187  
JOSEPH RAGUSA, :  
Defendant. :

-----x  
United States Courthouse  
Brooklyn, New York

August 24, 1973  
2:00 o'clock p.m..

B e f o r e :

HONORABLE JOHN F. DOOLING, JR., U.S.D.J.

ILENE GINSBERG  
Court Reporter

## A P P E A R A N C E S :

ROBERT A. MORSE, ESQ.,  
United States Attorney for the  
Eastern District of New York

BY: ALAN NAFTALIS, ESQ.,  
Assistant United States Attorney

ALBERT TOMEI, ESQ.,  
Attorney for Defendant.

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1 THE CLERK: Criminal cause for hearing,

2 U. S. A. v. Joseph Ragusa.

3 MR. NAFTALIS: Good afternoon, your Honor. We  
4 are about to begin.

5 THE COURT: Have you got a witness?

6 MR. NAFTALIS: Yes, I do.

7 The Government calls as its witness Joseph  
8 Salvemini.

9 THE COURT: Stop right there, please and  
10 raise your right hand.

11 J O S E P H P . S A L V E M I N I , having first  
12 been duly sworn by the Court, took the witness stand  
13 and testified as follows:

14 THE COURT: State your name for the record and  
15 spell it, please.

16 THE WITNESS: Joseph P. Salvemini, S-a-l-v-  
17 e-m-i-n-i.

18 DIRECT EXAMINATION

19 BY MR. NAFTALIS:

20 Q By whom are you employed, Mr. Salvemini?

21 A The United States Department of Justice, as a  
22 Special Agent with the Drug Enforcement Administration.

23 Q Is that the successor agency to the Bureau of  
24 Narcotics and Dangerous Drugs?

25 A - It is.

1  
2 Q Mr. Salvemini, do you know the defendant,  
3 Joseph Ragusa?

4 A I do.

5 Q In what capacity do you know Mr. Ragusa?

6 A I know him in that I worked undercover and he  
7 sold me a quantity of heroin.

8 Also, he was a registered informant of mine  
9 for a period of time and is the defendant in the case before  
10 the Court.

11 Q For the record, do you see him in Court today?

12 A Yes. He is the gentleman seated at counsel  
13 table in the yellow shirt.

14 MR. NAFTALIS: I'd like the record to show  
15 that the witness has identified the defendant.

16 Q You indicated a moment ago that Mr. Ragusa  
17 was a registered informant -- I believe was the term you used --

18 -- A Yes, for a period of time.

19 Q Would you please describe to the Court the  
20 nature and type of information he supplied in that capacity?

21 A Initially, when arrested by us he agreed to  
22 cooperate with the Bureau of Narcotics and gave us a state-  
23 ment as to certain large scale narcotics transactions that  
24 he had had with a gentleman by the name of Vincent Pappa.

25 Q Do you have that statement in Court today?

1  
2 A I do sir.

3 Q Would you please produce it?

4 MR. NAFTALIS: I'd like to have this report  
5 marked as a Government's exhibit.

6 Do you want the original or copy for the  
7 record?

8 THE CLERK: This will go into the Court file.

9 MR. NAFTALIS: Let me give you a xerox copy.  
10 The original must be maintained in the BNDD files.

11 Here is a xerox copy.

12 THE CLERK: Three-page statement of Joseph  
13 Ragusa dated July 17, 1972 marked for identification  
14 as Government's hearing exhibit 1.

15 (So marked.)

16 BY MR. NAFTALIS:

17 Q This statement, Mr. Salvemini, which has just  
18 been marked Government's hearing exhibit number 1, is the  
19 statement you took from Mr. Ragusa at the time of his arrest?

20 A Yes it is.

21 Q Would you please read this statement for the  
22 Court?

23 A Headed, in capital letters --

24 THE COURT: Oh, I can read.

25 MR. NAFTALIS: I thought it would save time



1  
2 so the defendant and counsel could hear it.

3 MR. TOMEI: I have a copy.

4 THE COURT: All right. You have a copy.

5 MR. TOMEI: Yes, so I can see it.

6 (Pause.)

7 THE COURT: All right. I have read it.

8 MR. NAFTALIS: Before going further with the  
9 examination I want to clarify one point for the  
10 record so the Government will be proceeding properly.

11 The guilt of this defendant obviously has been  
12 established by his guilty plea to Count 1 of the  
13 indictment and the Government will now be limiting  
14 its examination of the witness or witnesses solely  
15 as to the question of the defendant's cooperation  
16 with the Government.

17 THE COURT: That's all that was raised.

18 BY MR. NAFTALIS:

19 Q Mr. Salvemini, we now have the statement that  
20 you say was taken from Mr. Ragusa at the time of his arrest.

21 What did he indicate to you at the time he  
22 gave you this statement?

23 A He indicated to us that he knew he was in a  
24 great deal of trouble and he indicated that he wanted to  
25 cooperate; that it was his desire to cooperate with the

1  
2 Government in the hope of alleviating the situation.

3 Q Did he specify the nature of his cooperation;  
4 against whom he intended to cooperate?

5 A Yes sir.

6 He stated that he would make a case against  
7 Vincent Pappa, a major narcotics figure in organized crime.

8 Q Is that the Vincent Pappa in Atlanta Penitentiary?

9 A Yes.

10 Q And the one involved recently in major heroin  
11 dealings in New York City?

12 A Yes sir.

13 Q Mr. Salvemini, would you please indicate the  
14 nature of any agreement made between the Bureau of Narcotics  
15 and Dangerous Drugs Agency and the defendant with respect  
16 to Vincent Pappa?

17 A Initially we agreed to refrain from arresting  
18 additional defendants in the investigation to which Mr.  
19 Ragusa was a party to avoid compromising his situation on  
20 the street and we agreed to discuss the matter further with  
21 the United States Attorney's office in the morning and we did  
22 what we call, baby-sat.

23 We didn't incarcerate him at that time but  
24 agents were sitting with him all along.

25 The following day he was brought to Mr. Murphy.

1 Q William Murphy of the Strike Force?

2 A Yes.

3 Q What was said at the meeting with Mr. Murphy?

4 A It was agreed between Mr. Ragusa and myself,

5 as the agent on the scene and Mr. Murphy that Mr. Ragusa  
6 would give the grand jury, sitting that morning, certain  
7 testimony relative to the narcotics trafficking activity of  
8 Vincent Pappa and other people and our defendant, Mr. Ragusa  
9 and that in the event that a substantive case -- in the un-  
10 likely event I would add -- that a substantive case could  
11 not be generated against Mr. Pappa, we would proceed along  
12 the lines of conspiracy against Mr. Pappa.

13 MR. NAFTALIS: At this point I offer for  
14 identification purposes a grand jury transcript,  
15 United States of America versus Joseph Ragusa, the  
16 witness being Joseph Ragusa, dated July 18, 1972 and  
17 reading from the cover of the transcript I note that  
18 the grand jury investigation was conducted by William  
19 T. Murphy, Esq., being noted as a member of the Strike  
20 Force.

21 THE CLERK: Transcript marked for identification  
22 as Government's hearing exhibit 2.

23 (So marked.)

24 Q Mr. Salvemini, did you have any role in the  
25



1  
2 preparation of Mr. Ragusa for his appearance before that  
3 grand jury?

4 A Only in the sense -- and I reviewed this at  
5 your office yesterday -- only in the sense that I believe  
6 many of the questions asked by Mr. Murphy were inquiries  
7 obtained in our statement. Other than that I was not present  
8 when testimony was given. I was outside.

9 Q Have you read the transcript?

10 A Yes.

11 Q Do the statements in that basically conform  
12 to the statement in the signed confession given to you at  
13 the BNDD office?

14 A Yes.

15 MR. NAFTALIS: Do you want to see a copy of  
16 that transcript?

17 MR. TOMEI: I have that.

18 Q For the record, Mr. Salvemini, would you please  
19 indicate the nature of what Mr. Ragusa testified to before  
20 the grand jury?

21 A In essence he gave an indication of the amount  
22 of time he had been engaged in the trafficking of illicit  
23 narcotics; how he was introduced into the trafficking of  
24 illicit narcotics; some of the individuals other than  
25 Vincent Pappa, he was associated with and the events leading

1  
2 up to his possession of approximately 50 kilcs of pure  
3 brown heroin belonging to Mr. Pappa and his sale of a  
4 certain quantity of that heroin to myself earlier that year,  
5 I believe, March of 1972.

6 Q Now Mr. Salvemini, was any agreement reached  
7 between yourself and Mr. Ragusa or yourself, Mr. Ragusa and  
8 Mr. Murphy as a consequence of his appearance before the  
9 grand jury and at Mr. Murphy's office July 18th, 1972?

10 A Yes sir.

11 Q What was the nature of that agreement?

12 A As I stated before there were several agree-  
13 ments; the one being that we wouldn't arrest additional  
14 defendants in the investigation and secondly, that the  
15 defendant would not advise any of the other defendants of  
16 his arrest. He was to keep in close contact with the Bureau  
17 of Narcotics and follow our directives relative to his  
18 actions with Mr. Pappa in the future very explicitly and  
19 in return for that the United States Attorney's office would  
20 make recommendations to the presiding Judge handling the  
21 case as to the extent of Mr. Ragusa's cooperation.

22  
23 (Continued next page.)  
24  
25



1  
2 DIRECT EXAMINATION

3 BY MR. NAFTALIS (CONTINUING):

4 Q For the record, Mr. Salvemini, would you  
5 please note, to the best of your recollection, the names of  
6 the other persons who were involved in the heroin sale that  
7 you were involved in, the one that Mr. Ragusa was arrested  
8 for?

9 A George Hamilton, Barbara Biarbi, and Tony Biarbi --  
10 not his wife -- the common law wife of Mr. Hamilton was  
11 associated with the wife of Mr. Pappa -- and then it would  
12 be mentioned to Mr. Ragusa's wife, who was a sister-in-law.

13 Q In other words, there were family relationships  
14 among these personalities?

15 A Yes.

16 Q Did you have occasion to meet with Mr. Ragusa  
17 or speak with him again in connection with cooperation?

18 A Yes, sir, I did.

19 He contacted me by telephone, I believe two  
20 times a week, fairly regularly, and in addition I had several  
21 meetings over a period of approximately two and a half months  
22 with him relative to certain information he provided me with  
23 regarding the activity of Mr. Pappa.

24 Q Did an arrest come as a consequence of this  
25 information supplied to you?



1  
2 A No, sir.

3 Q As an experienced narcotics agent, how would  
4 you appraise the value of the information he gave you?

5 A We were ultimately able to determine, aside  
6 from the statements that he gave us, the information he gave  
7 us, information on the street, as far as Mr. Pappa's move-  
8 ments and intentions and certain conversations that the had  
9 had with Mr. Pappa, they were out-and-out falsehoods, lies,  
10 meant to deceive the Bureau, made to have us believe he was  
11 cooperating, and he wasn't. He was just attempting to buy  
12 time.

13 Q Based on the information given you by Mr. Ra-  
14 guso did the agency at any time employ agents as a consequence  
15 of this information?

16 A Yes, sir. In August, I believe, of 1972, Mr.  
17 Ragusa came to me with the information that he was approached  
18 by Mr. Pappa, and Mr. Pappa gave him a cryptic message that  
19 he would give him more money than the last time -- the last  
20 time being when Mr. Ragusa sat on 50 kilos of heroin.

21 Q You mean he stored --

22 A Yes, he was the stash man.

23 He received a message that Mr. Pappa wanted  
24 him to do another job and he would make a great deal of money  
25 this time and at that time Mr. Ragusa asked me to attempt to

1  
2 get a car for him from the Bureau -- United States Bureau of  
3 Motor Vehicles -- because he said that Mr. Pappa had advised  
4 him that he would need a car for the second operation to  
5 store the heroin and I went to my supervisor and it was  
6 decided not to obtain the car for Mr. Ragusa, feeling that  
7 if the information was in fact correct, that Mr. Pappa would  
8 provide the car.

9               Sometime later, I believe it was in the early  
10 part of September of 1972, Mr. Ragusa came to us and said  
11 had again been approached by Mr. Pappa and there would be  
12 a delivery of between 25 and 50 kilos of pure heroin that  
13 week, the week following his conversation with me, and we  
14 should be prepared to make the seizure.

15               As a result of that I initiated, along with  
16 approximately half a dozen other agents, a 24-hour surveil-  
17 lance of certain locations in Astoria, Queens, the residence  
18 of the informant and at the residence of Mr. Pappa and  
19 several associates.

20               In the midst of the surveillance Mr. Ragusa  
21 disappeared.

22               In the course of the 24-hour surveillance of  
23 Pappa, intermittent of Mr. Ragusa, we began having suspi-  
24 cions that he wasn't truthful with us.

25               Q           How many agents were in the varying surveillances



1  
2 A Approximately a dozen agents.

3 Q And how many days?

4 A I would say for a period of approximately eight  
5 days.

6 Q Approximately a dozen agents working in shifts  
7 to cover the 24-hour a day period?

8 A That is correct.

9 Q As a consequence of that 8-day, 24-hour a day  
10 surveillance, was any evidence gleaned?

11 A Absolutely not.

12 Q Any arrests made?

13 A No, sir.

14 Q What did you find in respect to Mr. Ragusa in  
15 consequence of that 8-day surveillance?

16 A When I was unable to locate Mr. Ragusa we began  
17 following his wife around and I believe his wife's sister --  
18 Mr. Hamilton's common-law wife around -- and I think after  
19 three or four days of tight surveillance of them they began  
20 to realize they were under observation and they approached  
21 the agent and after a conversation with my supervisor I el-  
22 ected to approach them and asked where Mr. Hamilton and Mr.  
23 Hamilton and Mr. Ragusa had fled to, and after approximately  
24 another day of cajoling, conversations and surveillance it  
25 was determined that the two of us had been lied to and they



1  
2 were somewhere outside West Cleveland or Chicago and the  
3 wives claimed no contact with them.

4 Q You just indicated that you were told that  
5 Mr. Ragusa had been lying to you during the period when he  
6 was supposed to be cooperating. Who indicated that to you?

7 A His wife, and she and I think Rita, both indi-  
8 cated a knowledge that the Bureau was interested in Mr. Pappa  
9 and the fact that Mr. Ragusa was arrested and the fact that  
10 we were meeting on a fairly regular basis.

11 Both females indicated a complete knowledge of  
12 these facts.

13 Q After you had told Mr. Ragusa not to mention  
14 it?

15 A Correct.

16 Q And the females indicated that Mr. Ragusa was  
17 lying to you?

18 A That he had discussed the subject of his co-  
19 operation and his situation with Mr. Hamilton and the two  
20 women but not the Biarbi people.

21 Since Mr. Pappa was due to be incarcerated  
22 sometime in September, they created this load of heroin so  
23 we would concentrate along other lines, be less aware of  
24 them, and they could make a getaway.

25 Q The women indicated, I take it, the wives,

1 indicated to you that Mr. Ragusa had been fabricating the  
2 story about this additional load, the load that caused  
3 twelve agents to work twenty-four hours a day for eight days,  
4 as a sham, a cover, to facilitate their fleeing the juris-  
5 diction, and possibly prosecution?  
6

7 A Yes. They stated -- they went back as far as  
8 the situation I mentioned before -- the automobile -- and  
9 they stated that this was why they wanted the car, and they  
10 took us to a location in Queens where Ragusa and Hamilton  
11 purchased a second-hand car and used that car in fleeing  
12 across the state line.

13 Q Now, Mr. Salvamini, I take it you were the  
14 agent involved with the overall supervision and running of  
15 this investigation in which Mr. Ragusa played a prominent  
16 role?

17 A Correct.

18 Q Would you please tell the Court, to the best  
19 of your ability, your evaluation as to the total truthful-  
20 ness and value of the information supplied to you by Mr. Ra-  
21 gusa in his informant position.

22 A The information he supplied initially relative  
23 to the 50 kilos coincided with other information we had  
24 about Mr. Pappa's heroin activity at the time that I made  
25 the undercover purchase, so I would say in my professional



1  
2 opinion the information was highly accurate.

3 Q This is in the grand jury statement?

4 A Yes, that you introduced as evidence.

5 Q The information given at the time of his  
6 arrest contained in the statement marked Government's  
7 Exhibit 1, and the grand jury transcript, marked as Govern-  
8 ment's Exhibit 2?

9 A Yes, sir.

10 Q What is your evaluation of the additional  
11 information he gave you after the period in which he agreed  
12 to become an informant?

13 A A complete falsehood. It was something that  
14 he created in an attempt to throw us off and lead the Bureau  
15 into believing that he was in fact cooperating and to get  
16 the Bureau to try to mitigate his legal situation somewhat.

17 Q Over and above the initial confession you  
18 received from Mr. Ragusa on the grand jury transcript,  
19 which paralleled his confession, did the BNDD, to the best of  
20 your knowledge, receive any information of any value, any  
21 intelligence information?

22 A There were other attempts that relate to what  
23 you are talking about.

24 We had attempted first to induce him to come  
25 back to the jurisdiction.



1  
2 We had a defendant who wasn't booked or finger-  
3 printed due to our arrangements with the United States  
4 Attorney's office, and now he had elected to become a fugi-  
5 tive.

6 Q At the time he fled west?

7 A Yes -- and I advised his wife and Mr. Hamil-  
8 ton's common-law wife that we didn't intend to arrest him,  
9 and his cooperation could still be useful.

10 He then, after four or five days, elected to  
11 come back to the jurisdiction.

12 We convinced him to come down. We arrested  
13 him at that time. He gave us information about associates  
14 of Mr. Pappa working outside of Ditmars, a private car  
15 service, and he indicated that through Mr. Pappa he could  
16 reach the individuals and he believed Mr. Pappa would  
17 attempt to make narcotics transactions while he was in  
18 Atlanta.

19 We thought to give him the benefit of the  
20 doubt because of the quality of the violator he was speaking  
21 about.

22 Q Mr. Pappa?

23 A Yes. And we attempted to again utilize Mr.  
24 Ragusa.

25 On one occasion he went and had a meet

1  
2 Mr. Pappa -- well, we don't know that he did, because due  
3 to the quality of the violator we couldn't get more than  
4 two or three blocks from Mr. Pappa's house.

5 So we wired Mr. Ragusa with a Kel transmitter.  
6 It was working fine, and then the Kel transmission went dead  
7 when he walked a block away, and he told us that he was told  
8 that he, Mr. Pappa, was going to jail in September and that  
9 he would be in contact with people in the Ditmas private car  
10 service after he was in jail, and we couldn't verify that  
11 because the transmitter went down.

12 Subsequent to that, Mr. Ragusa stopped calling  
13 me on a regular basis and I phoned the United States Attor-  
14 ney's office and we agreed to proceed with the prosecution;  
15 that in fact Mr. Ragusa was continuing his sham of coopera-  
16 tion with the Government, and he was subsequently -- his  
17 services were terminated as an informant and the Government  
18 proceeded with the present legal action.

19 In addition to that, I believe it was approx-  
20 mately one month ago that I was contacted by you that you  
21 had been contacted by Mr. Ragusa stating that he had valuable  
22 narcotics information relative to a boatload of cocaine, and  
23 after having the conversation with you I made a meeting with  
24 Mr. Ragusa, and he told me he had met a Spanish individual  
25 expecting a large shipload of cocaine, but that he had

1  
2 neglected to get the individual's name, address or phone  
3 number and had no way of contacting him and again at this  
4 time, in view of our past history with him, I doubted the  
5 story but gave him the benefit of the doubt, gave him an  
6 undercover number, and told him that should he run into  
7 this individual he should have the individual call the number  
8 and ask for myself, and I never again saw or heard from Mr.  
9 Raguso nor received any information from the individual who  
10 was supposed to contact me at the undercover number that  
11 I used.

12 MR. NAFTALIS: Nothing further.

13 MR. TOMEI: One minute, your Honor.

14 (Continued on the next page.)  
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## CROSS EXAMINATION

BY MR. TOMEI:

Q Mr. Salvemini, the transaction between you and the defendant, Joseph Ragusa, took place on March 16?

THE COURT: Louder, please.

Q The sale of heroin by Ragusa to you took place March 16?

A I believe so. I haven't referred to my notes in a long time.

Q Subsequent to that, was Mr. Ragusa under your surveillance?

THE COURT: What?

Q Subsequent to that, was Mr. Ragusa under your surveillance?

A No, sir, he was not.

Q He was subsequently arrested, or picked up on July 17; correct?

A I believe that is the date.

Q Did you pick him up, or did you arrest him?

A No, I did not physically arrest him. I caused him to be arrested.

Q Do you know who did arrest him?

A I believe it was Special Agent Tripp.

Q Do you know what time he was arrested?

1  
2 A I think 8:00 P.M. in the evening.

3 Q What was the first time that you saw him on the  
4 17th?

5 A Within twenty minutes, twenty to thirty minutes,  
6 however long it took to drive from Astoria to Church Street  
7 in Manhattan.

8 Q You met him at 90 Church Street?

9 A Yes.

10 Q In a room?

11 A Yes.

12 Q Who was present at the time?

13 THE COURT: Look, he has the statement --

14 Q Mr. Salvemini, you knew the background of Mr.  
15 Ragusa; correct?

16 A I don't understand.

17 Q You had given information to the authorities or  
18 to your superiors that Mr. Ragusa made a sale to you?

19 A Yes, sir.

20 Q Did you know anything else about Mr. Ragusa be-  
21 sides the sale that he made to you?

22 A Certain things, yes.

23 Q And you knew that if Mr. Ragusa was arrested and  
24 indicted on this, he would face a lot of time; is that right?

25 A Yes. Of course, I don't know what a lot of time--



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Q Did you tell Mr. Ragusa he was in a lot of trouble when he was arrested?

THE COURT: Sure he did. Move on.

Q Wasn't it you who initiated the issue of cooperation?

THE COURT: Of course, certainly.

MR. TOMEI: The statement was that Mr. Ragusa initiated the issue of cooperation.

THE COURT: It's not an important difference.

Isn't it a fact that a statement like this (indicating document) is a highly cooperative statement?

THE WITNESS: Yes.

THE COURT: That's "A" for cooperation.-- that statement, in and of itself, is it not?

THE WITNESS: Yes.

Q The testimony given by Mr. Ragusa in the Grand Jury July 18, 1972, was that ever utilized with respect to prosecuting Mr. Pappa?

A It could never be used.

THE COURT: Sure it could.

THE WITNESS: I was advised by the United States Attorney's office that in view of the fact Mr. Ragusa proved unreliable on other occasions, it would be difficult to prosecute Mr. Pappa on this man's testimony.



THE COURT: That's a different matter.

Q Now, there came a time when you said he fled the jurisdiction, came back, and then he was wired; correct?

A Well, --

Q Was he wired after he came back from Ohio?

A Yes.

Q Who wired him?

THE COURT: The Government. Come on.

MR. TOMEI: The wiring was faulty, was the testimony, along with an inference that Mr. Ragusa turned it off.

THE WITNESS: I believe that is correct.

THE COURT: I just heard by long distance telephone about someone who went to interview somebody, and she had her tape recorder, and when she got back to the office to play it, it was a complete dud. These things happen, and also to Agents; is that right?

THE WITNESS: Possibly, yes, sir, very possible.

THE COURT: Sure. You have no way of knowing -- except that this was just another sort of thing that happened to Mr. Ragusa -- that he turned it off. If it were anyone else, you would have said, "It slipped again. Let's talk to the Kel set company."

THE WITNESS: Yes.

5 1  
2 Q When he went in, he was wired, and when he came  
3 out he was wired; correct.

4 A He still had the equipment on him, yes.

5 MR. TOMEI: Nothing further -- One other question.

6 Q Isn't it a fact that many times you would utilize  
7 people you arrested, or were about to arrest, as Informants?

8 A Yes.

9 Q And yet not in all cases you get information that  
10 is valuable, do you?

11 A No, sir. When we utilize an individual -- Well,  
12 it's a matter of semantics -- sometimes an individual doesn't  
13 work out, yes.

14 Q And isn't it a fact that the situation Mr. Ragusa  
15 was in was a dangerous one; his life was in danger; isn't that  
16 a fact?

17 A I don't know.

18 Q Did Mr. Ragusa ever tell you that he went to Ohio  
19 because he was afraid that his life was in danger, because Mr.  
20 Pappa scored him?

21 A No, because Mr. Pappa was going to jail in late  
22 September, and he knew the cooperation was not useful to the  
23 Government, and he elected to flee.

24 Q He told you that in those terms?

25 A I'm paraphrasing as to the information submitted



to me by Mr. Ragusa as to why they fled -- they both knew they were in serious legal difficulty; they knew they would be incarcerated; had nothing else to help themselves, and they elected to flee the jurisdiction, and it is not a quote, but a paraphrase.

Q And knowing this, you elected to utilize Mr. Ragusa?

A We figured to give it another attempt, because of the violator we were talking about, and as I stated, it again proved unsuccessful.

MR. TOMEI: Nothing further, your Honor.

MR. NAFTALIS: The Government has no further witnesses.

THE COURT: Thank you, Mr. Salvemini.

THE WITNESS: May I have the statement back, please?

THE COURT: Yes.

MR. NAFTALIS: I'm now going to ask you to -- I move for the admission into evidence of the confession.

THE COURT: Do you have a copy of it, or know about it?

MR. TOMEI: Yes.

MR. NAFTALIS: As well as the Grand Jury transcript.

MR. TOMEI: Which was voluntarily given to me by the United States Attorney.



7 1 THE COURT: How do you feel about the two copies?

2 MR. NAFTALIS: Oh, no, I have given a Xerox copy  
3 so the original can be maintained by the Department in  
4 its files.  
5

6 MR. TOMEI: No objection to it in evidence.

7 THE CLERK: Government's Exhibits 1 and 2 now  
8 marked in evidence.

9 May I please have the Grand Jury minutes?

10 (So marked.)

11 MR. TOMEI: Your Honor, I call to the stand Mr.  
12 Joseph Ragusa.

13 THE COURT: Yes.

14 Would you stop there, raise your right hand and  
15 face me.

16 J O S E P H R A G U S A , having first been duly Sworn  
17 by the Court, took the witness stand and testified as  
18 follows:

19 THE COURT: State your name and spell it, please.

20 THE WITNESS: Joseph Ragusa, R-a-g-u-s-a.

21 DIRECT EXAMINATION

22 BY MR. TOMEI:

23 Mr. Ragusa, subsequent to your arrest, did you meet with  
24 Mr. Salvemini and his fellow Officers, and agree to cooperate  
25 with the Federal Authorities?

1 A Yes, I did.

2 Q Can you relate to this Court the extent of your  
3 cooperation, respecting any information concerning narcotics  
4 transactions.  
5

6 A Well, I -- I told Joe Salvemini and Agent Richie--  
7 MR. NAFTALIS: I can't hear you.

8 A (continuing) -- Richie Kegler, I would try to  
9 help as much as I could, and whenever I could.

10 Q All right.

11 Now, Mr. Salvemini indicated that there came a  
12 time in September when you indicated that another kilo, or that  
13 heroin would come in from Mr. Pappa?

14 A Correct.

15 Q From whom did you get the information?

16 A From Tony -- I don't know the last name.

17 Q A man by the name of Tony?

18 A Right.

19 Q You related this to Mr. Salvemini?

20 A I did.

21 Q What was the information you had gotten?

22 A He told me that Vinnie Pappa wants a suitcase held  
23 at my house, and he would pay me a certain amount of money.

24 Q Did he indicate when he would bring the suitcase?

25 A Within a week.



Q That's when the surveillance of your house took place?

A Yes.

Q You were aware of that?

A Yes.

Q What happened?

A On a Friday night, the same week, the same man came back to the house and told me the deal was off, that there would be no heroin transaction.

Q What did you do then?

A Well, I thought that Vinnie Pappa found out that I had testified against him, and that's why he called it off, and that's why I ran.

Q You left?

A Yes.

Q When did you leave?

A The next day or day after.

Q Did you leave with anyone besides yourself?

A George Hamilton.

Q Now, did there come a time when you were contacted while -- Where were you -- in Ohio?

A Yes.

Q You were told to come back?

A No.



10 1

2 Q What happened?

3 A We talked about it, me and George Hamilton, and  
4 decided the best thing to do was come back and notify the  
5 Agents.

6 Q Before anyone got in touch with you?

7 A Correct.

8 Q And did you get in touch with the Agents?

9 A Yes, we did.

10 Q Mr. Salvemini; correct?

11 A Yes.

12 Q What did you tell Mr. Salvemini?

13 A Just what I told you; that I had been contacted  
14 again, and they told me that the deal was off, and I told them  
15 I was afraid, and so I ran.

16 Q Did Mr. Salvemini indicate that you should con-  
17 tinue your activity?

18 A Well, he said he wanted to know why the deal was  
19 off. That's when he came back and wired me for sound.

20 Q He wired you?

21 A Him and five other Agents.

22 Q And as a result of that wiring, you met with  
23 Vincent Pappa?

24 A Right.

25 Q Where did you meet with Pappa, and for how long?

1  
2 A At his home, for approximately five minutes.

3 THE COURT: How many minutes?

4 THE WITNESS: Five minutes.

5 A What did you say to him, and he to you?

6 A Joe Salvemini asked me to tell him that I was  
7 short of cash and money, and if I could do another job, or  
8 what happened -- He told me to ask Vinnie Pappa that I was  
9 short of money, and could I do jobs, or whatever, for money,  
10 and Pappa said he was going away to jail for a period of five  
11 years, and when he would come out, we could work something out.  
12 That's the only thing he told me.

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14 (continued on next page.)  
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1  
2 DIRECT EXAMINATION

3 BY MR. TOMEI: (continuing)

4 Q Did you at any time turn off the recorder that  
5 you had on?

6 A I wouldn't know how.

7 Q And did you relate to Mr. Salvemini what you re-  
8 lated in this court?

9 A He didn't ask what he said or didn't say. He  
10 asked a few questions, but not -- just what did I say, and I  
11 told him. And then I told him that he said when he comes out  
12 maybe he can work something out.

13 Q You heard testimony about a boatload of heroin  
14 coming in?

15 A Correct.

16 Q Tell the Court about that.

17 A I told Mr. Salvemini there would be two or three  
18 kilos of cocaine, not a boatload, and I gave him the name, and  
19 where to get in contact with him. I didn't know the guy that  
20 good to contact him myself, to go in details. I figured he'd  
21 take over. I gave him the name. That's all I could do.

22 Q You gave him the full name?

23 A I did, yes, sir.

24 MR. TOMEI: Nothing further.

25 CROSS EXAMINATION



2 1  
2 BY MR. NAFTALIS:

3 Q Mr. Ragusa, when you were arrested, who first  
4 mentioned the name Pappa, or your association with him? Did  
5 you bring the subject up yourself?

6 THE COURT: I don't care about it. That's a  
7 beautiful statement on arrest. I don't care who brought  
8 it up.

9 Q Were you cautioned by the BNDD not to discuss  
10 your involvement with anyone?

11 A Yes.

12 Q Did you?

13 A Yes.

14 Q Why?

15 A I discussed it with my wife.

16 Q With Mr. Hamilton?

17 A Not right away, after a period of time.

18 Q Why did you discuss it with Mr. Hamilton?

19 A After I found out that there was not going to be  
20 another transaction, I told him about it. I know I shouldn't  
21 have.

22 Q What kind of transaction are you talking about?

23 A A suitcase was supposed to be delivered to my  
24 house.

25 Q Approximately when was this?

2 A I don't remember the date.

3 Q This was September, when you fled to Ohio?

4 A Right -- A week previous to that.

5 Q Was Mr. Hamilton going to be a co-defendant with  
6 you in a Government prosecution?

7 A I don't understand.

8 MR. TOMEI: Objection.

9 Q Is that the same George Hamilton involved in your  
10 heroin sale to Salvemini, the one you are presently prosecuted  
11 for, and you are pleading Guilty to?

12 A Yes.

13 Q You testified a few minutes ago that you fled to  
14 Ohio because you were afraid?

15 A Right.

16 Q Of what?

17 A That Pappa found out I testified against him, and  
18 that's why I called off the deal.

19 Q So, you fled to Ohio?

20 A I fled, right.

21 Q And while in Ohio, you testified, you didn't hear  
22 from anyone?

23 A I didn't.

24 Q And then you decided on your own to come back to  
25 New York with Hamilton?



2 A Yes.

3 Q Why didn't you think you could get killed then?

4 A We figured to contact Salvemini and Kegler.

5 Q Weren't you afraid when you got back to New York  
6 you would get killed?

7 A I figured as soon as we came back we would notify  
8 them.

9 Q Why didn't you call them from Ohio if you wanted  
10 to cooperate?

11 THE COURT: Oh, please, I don't care about that.

12 Q Now, Mr. Ragusa, a few minutes ago you testified  
13 that you then went and met with Pappa again. -- This is the  
14 time you were wearing the Kel set.

15 A Right.

16 Q You weren't afraid of him at that point?

17 A I had no choice in the matter. They told me I  
18 had to do it, and I did.

19 Q You didn't say to them that you were afraid you  
20 could get killed?

21 A As far as I knew, the thing was working, and they  
22 were right outside in a car across the street from Pappa's  
23 house. If anything happened, I figured they were there.

24 Q You didn't think your life would be in danger?

25 A I was afraid.



Q Did you indicate that to the Agents?

A I told them I was worried, but what choice did I have?

Q You were ready to risk your life?

A I figured it wasn't that much of a risk. They were right there.

Q Did you know whether the mic was concealed on your body?

A Yes.

Q Where?

A Underneath my shirt collar.

Q Do you know how to cover a mic?

A Well, I guess if I want to cover it I put my hand on it.

MR. NAFTALIS: No further questions.

MR. TOMEI: No further questions.

MR. NAFTALIS: The Government has no further witnesses.

THE COURT: Well, it seemed to me he gave a statement that foreclosed any defense in the case, which was indefensible, anyway, but he gave an extraordinarily forthcoming statement.

I don't know at what stage that was in Mr. Pappa's career, but I take it that perhaps Mr. Pappa's number

6 1 was already up.

2  
3 But even so, after that, his efforts to cooper-  
4 ate, real or unreal, came to nothing -- Probably, as  
5 much for any other reason, because he wasn't in it  
6 enough to be an effective cooperator, and maybe over-  
7 sold Mr. Salvemini on what he could do for him, and  
8 then, of course, he couldn't deliver.

9 Did he try? Well, I suppose even a wounded  
10 tiger like Pappa is no one to fool with, and he fooled  
11 with him twice. He says that at least once he went to  
12 his house after having testified before a Grand Jury,  
13 and mentioning his name. I suppose you get a small medal  
14 for that, even though it really doesn't help the Govern-  
15 ment a bit.

16 I would say that it just turned out that he wasn't  
17 a very effective cooperator, and hardly, no doubt, a  
18 model of candor in his relationship with the Government,  
19 but then, how many people are -- as we learn from every-  
20 thing we read nowadays.

21 So, I would say that on cooperation he was some-  
22 what better than most defendants, but not good enough to  
23 be genuinely useful to the Service except in pretty thor-  
24 oughly eliminating any possibility that he could ever  
25 defend his own case that was put beyond defense.



7 1 So, he is entitled to the consideration which  
2 flows from a man's willingness to at least get on the  
3 road toward cooperation, even though he probably should  
4 have known in his heart of hearts that he had no real  
5 intelligence to give to the Government, and no useful  
6 cooperation to tender to them.

7 I suppose he thought with whatever contacts with  
8 the underworld, if you call it that, he had, he might  
9 be able to turn something up that would make it a lot  
10 easier. It failed. That's what I get out of it.

11 I don't mark him double-villain for that, and the  
12 crime he was involved in was quite bad enough.

13 Do you want to do the sentence next Friday?

14 MR. TOMEI: Next Friday morning, fine.

15 THE CLERK: 9:45.

16 THE COURT: Without fail.

17 THE DEFENDANT: I will be here.

18 THE COURT: Otherwise I have to remand you right  
19 now, you know.

20 MR. TOMEI: That you.

21 MR. NAFTALIS: Thank you, your Honor.

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I N D E X

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WitnessesDirectCross

Joseph P. Salvemini

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Joseph Ragusa

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ExhibitsGovernment'sFor Id.In Evid.

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3-pg Statement, 7/17/72

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Grand Jury Transcript

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A 66

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X  
UNITED STATES OF AMERICA, :  
- against - :  
VINCENT PAPA and : 72 CR 473  
VIRGIL ALESSI, et al, :  
Defendants. :  
- - - - - X

United States Courthouse  
Westbury, New York

September 5, 1972

B e f o r e :

HONORABLE ANTHONY J. TRAVIA,  
U. S. D. J.

ANTHONY MANCUSO  
COURT REPORTER

1

2 A p p e a r a n c e s :

3

4

ROBERT A. MORSE, ESQ.,  
United States Attorney for the  
Eastern District of New York

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6

BY: JAMES O. DRUKER, ESQ.,  
Special Assistant United States Attorney

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THEODORE ROSENBERG, ESQ.,  
GINO GALLINA, ESQ.,  
Attorneys for Defendant Papa

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FRANK A. LOPEZ, ESQ.,  
Attorney for Defendant Alessi

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THE COURT: United States of America

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versus Vincent Papa, et al. 72-CR-473.

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MR. DRUKER: That's correct.

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THE COURT: There is also another case

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on the calendar with the same number. Well, that

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must be part of it.

8

MR. GALLINA: That's all under 72-CR-473.

9

That's a superseding indictment.

10

MR. DRUKER: There is also to be a disposition

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to an information that will follow the narcotics

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case.

13

MR. ROSENBERG: If your Honor please, on the

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72-CR-473, defendant wishes to withdraw his plea of

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not guilty heretofore entered and wishes to plead

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guilty to count one to cover the entire indictment.

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And also under the information, your Honor.

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MR. GALLINA: And also under the information

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which the defendant waives indictment.

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THE COURT: That's a new one.

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MR. GALLINA: I believe the information

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number is --

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THE COURT: It doesn't have a number yet.

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If it's just being handed up, it doesn't have a

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number. Is he also pleading to the information?

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MR. GALLINA: That's correct, your Honor,  
under count four to cover all counts of the indictment.

THE COURT: This is not a superseding information, is it?

MR. DRUKER: No, it isn't.

THE COURT: Well, let's take the 473 first.  
Is Mr. Papa here?

MR. ROSENBERG: Yes, your Honor.

THE COURT: Are you Mr. Papa, Vincent Papa?

DEFENDANT PAPA: Yes, sir.

MR. GALLINA: Your Honor, may I make it  
known to the Court, we have in view of the fact it's  
a lengthy indictment, we have read the indictment to  
the defendant. We have gone over the facts.

THE COURT: Before you come to that, I want  
to pull out the indictment first. He is pleading  
guilty to count one. It's a three page count one.

MR. GALLINA: That's correct, your Honor.

THE COURT: Are you trying to obviate the  
necessity of reading it, which is my requirement  
under the plea?

MR. GALLINA: I am not certain.

THE COURT: And the overt acts, we can go to



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the ones where he is specifically named, if he is.

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MR. GALLINA: Just count one and four, your Honor.

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MR. DRUKER: One and five. I think it would have to be count one.

7

THE COURT: In the overt acts?

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MR. GALLINA: That's correct. He is only mentioned in count one.

10

THE COURT: Where in count one?

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MR. GALLINA: Count one he is mentioned as to fifth defendant.

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THE COURT: Are we looking at the superseding indictment?

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MR. GALLINA: That's correct.

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THE COURT: Well, that's the count, but how about the overt acts? Is he mentioned in any of the overt acts?

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MR. GALLINA: Overt acts, ten and nine; overt acts, 20 and 21, your Honor and overt -- That's it. Nine, ten, twenty and twenty-one.

22

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THE COURT: Is that it. Nine, ten, twenty and twenty-one.

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MR. GALLINA : That's correct. The counts he is mentioned in are nine, ten, twenty and twenty-one.



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your Honor.

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THE COURT: The overt acts.

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MR. GALLINA: That's correct, count one and overt acts nine, ten, twenty, and twenty-one.

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THE COURT: I am going to read the count completely and skip the overt acts that he is not involved in, so what is your request.

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MR. GALLINA: I am sorry, the assistant was speaking to me.

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THE COURT: You were making a request.

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MR. GALLINA: I was going to mention to your Honor, that the defendant is fully aware of all the counts. He has read all the matters in the indictment. I don't believe it is necessary for him to be made aware of the overt acts besides those in which he is individually sited.

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THE COURT: Well, we will read count one in its entirety, except those overt acts which he is not involved in. Does this meet with your approval as counsel?

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MR. GALLINA: Yes, sir.

THE COURT: Your approval also, Mr. Papa?

DEFENDANT PAPA: Yes, sir.

THE COURT: You understand what he is saying?

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DEFENDANT PAPA: Yes, sir.

THE COURT: Mr. Papa, you are one of the defendants named in the superseding indictment obtained in 72-CR-473.

DEFENDANT PAPA: Yes, sir.

THE COURT: You have just heard your lawyer Mr. Rosenberg saying that you wish to withdraw your plea of not guilty and plead guilty to count one of that indictment. Is that your full understanding, your knowledge and your consent?

DEFENDANT PAPA: Yes, sir.

THE COURT: You know what you are doing after advice of counsel and with advice of counsel.

DEFENDANT PAPA: Yes, sir.

THE COURT: You are fully familiar with what you are doing?

DEFENDANT PAPA: Yes, sir.

THE COURT: You have discussed that with them?

DEFENDANT PAPA: Yes, sir..

THE COURT: They have told you what the possibilities of punishment are here?

DEFENDANT PAPA: Yes, sir.

THE COURT: Is your lawyer Court appointed?

DEFENDANT PAPA: No, retained.



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DEFENDANT PAPA: Yes, sir.

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THE COURT: Mr. Papa, you are one of the  
defendants named in the superseding indictment  
obtained in 72-CR-473.

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DEFENDANT PAPA: Yes, sir.

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THE COURT: You have just heard your lawyer  
Mr. Rosenberg saying that you wish to withdraw your  
plea of not guilty and plead guilty to count one of  
that indictment. Is that your full understanding,  
your knowledge and your consent?

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DEFENDANT PAPA: Yes, sir.

THE COURT: You know what you are doing  
after advice of counsel and with advice of counsel.

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DEFENDANT PAPA: Yes, sir.

THE COURT: You are fully familiar with what  
you are doing?

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DEFENDANT PAPA: Yes, sir.

THE COURT: You have discussed that with them?

DEFENDANT PAPA: Yes, sir..

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THE COURT: They have told you what the  
possibilities of punishment are here?

DEFENDANT PAPA: Yes, sir.

THE COURT: Is your lawyer Court appointed?

DEFENDANT PAPA: No, retained.



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THE COURT: He is your own retained attorney?

DEFENDANT PAPA: Yes, sir.

THE COURT: Now, before accepting your plea or considering your plea, you must be informed of the charge against you and I am going to read the charge contained in count one and with your understanding, I'll read the entire count one. But only read those overt acts contained in count one that mention your name and that is with your understanding.

DEFENDANT PAPA: Yes, sir.

THE COURT: You have read the entire count and you have read all of the overt acts?

DEFENDANT PAPA: Yes, I did.

THE COURT: Count one in the superseding indictment reads as follows: "On or about and between the first day of April, 1967, and the 18th day of December 1971, both dates being approximate and inclusive within the Eastern District of New York, the defendants, Anthony Loria, Sr., William Huff, Nino Fazio, Leonard Spearman also known as "Mojo", Danny Loria, Vincent Papa," and that's you.

DEFENDANT PAPA: Yes, sir.

THE COURT: "Virgil Alessi, Salvatore Graziano, Anthony Loria, Ike Williams, Edgar Leonard,

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2 Anthony Passero, Henry Uvino, Joseph Cesario also  
3 known as "Joe Dirt", Ralph Loria, Jack DiAmatto,  
4 Jacqueline Gardner, John Doe, being a white male  
5 being known also as Nick Fasano and others to the  
6 Grand Jury unknown, wilfully, unlawfully and  
7 knowingly, did combine, conspire confederate and agree  
8 together and each other to violate--". Now: there  
9 was an amendment made in that sentence, "to violate  
10 prior to May 1, 1971--". Is that correct?

11 MR. DRUKER: To violate prior to May, 1971  
12 and then after May, 1971 it was sections that they  
13 conspired to violate.

14 THE COURT: Okay. "-- to violate prior to  
15 May 1, 1971, section 173 and 174 of the Title 21 of  
16 the United States Code and after May 1, 1971 to  
17 violate sections 812, 841(a) (1), 841 (b) (1),  
18 959 (a) (1) and 952 of Title 21 of the United States  
19 Code."

20 That May 1 date prior to May 1, 1971, it  
21 was under 173 and 174, the old narcotics laws and  
22 after May 1, 1971 that was repealed and a new one  
23 went in with the 841's; you understand that?

24 DEFENDANT PAPA: Yes.

25 THE COURT: So you know what that is.

and agree



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2 MR. GALLINA: Yes, your Honor, he under-  
3 stands that and it's been explained to him and it's  
4 been discussed with the Assistant United States  
5 Attorney, Mr. Druker, that his plea would be under  
6 this count in view of the fact that they site both  
7 sections of law. His plea would be under sections  
8 841 rather than 174 because of certain mandatory  
9 provisions under 174.

10 THE COURT: Except that part of this con-  
11 spiracy is prior to May 1, 1971, and how do you waive  
12 or get rid of the provisions of the sentencing under  
13 173 and 174?

14 MR. GALLINA: He is pleading to that count  
15 as having committed the overt act number 20, which  
16 is an act after the first of May, 1971.

17 THE COURT: Well, doesn't the conspiracy  
18 also discuss a conspiracy to conspire etc and  
19 agree to do certain things in violation of 173 and  
20 174?

21 MR. ROSENBERG: Yes, it does, but we are  
22 only pleading to what took place after.

23 MR. GALLINA: We are pleading to one sec-  
24 tion of the law.

25 THE COURT: He is telling me now that he is



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not guilty in 173 and 174.

MR. GALLINA: That's correct, his understanding as part of the plea is he plead to section 841 to cover the whole indictment

THE COURT: Is that all right with you, Mr. Druker?

MR. DRUKER: That's satisfactory to the government, your Honor.

THE COURT: All right.

"1. It was part of the said conspiracy that prior to May 1, 1971, the defendants unlawfully, wilfully and knowingly would conceive, conceal, buy, sell, and facilitate the transportation and to wit heroin, the exact amount thereof being to the Grand Jury unknown, after the said narcotic drug had been imported and brought into the United States in violation of sections 173 and 174 of the Title 21 of the United States Code."

"2. It was further a part of the said conspiracy that on and after May 1, 1971, the said defendants knowingly and would necessarily direct and would possess with intent to distribute and dispense a schedule one narcotic controlled drug substance, the exact amount thereof being to the Grand

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2 Jury unknown in violation of sections 812, 841 (a)(1)  
3 and 841B(1)(a) of Title 21 of the United States Code."

4 And then it gives a list of 24 other overt  
5 acts. And these overt acts each of which charge  
6 certain things that were done by certain of the de-  
7 fendants and overt act number nine which involved  
8 you, Mr. Papa reads as follows:

9 "On or about January 5, 1969, the defendant  
10 Vincent Papa delivered approximately one kilogram  
11 of heroin to the defendant Anthony Loria, Sr., in  
12 the Eastern District of New York." Mr. Druker, that's  
13 1969.

14 MR. DRUKER: Yes, your Honor, I think what  
15 Mr. Papa is saying that he is admitting having con-  
16 spired and he is admitting having done overt act  
17 number 20, your Honor. I don't believe he is admit-  
18 ting with regard to overt act nine or the other.

19 MR. GALLINA: Ten, or ten.

20 THE COURT: Well, how do you plead guilty  
21 to a count if you take pieces of a count out?

22 MR. GALLINA: Your Honor, I think the dif-  
23 ficulty was in the articulation of the count. They  
24 put in two sections of law.

25 THE COURT: That specifically says he de-



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2       livered a kilogram of heroin on that day, which is  
3       1969. Did he or didn't he do it?

4               MR. ROSENBERG:   Your Honor, what we are  
5       admitting to is under count 20:  that's 1971.

6               THE COURT:    But what are you trying to do  
7       here, forget about what happened prior to 1971?

8               MR. ROSENBERG:   Your Honor, we are only  
9       admitting a certain part of our guilt.

10              MR. GALLINA:  The charge here is a con-  
11       tinuing conspiracy, in fact he can only be punished  
12       and charged under one section of law.

13              THE COURT:    I would pick 173 if I were sen-  
14       tencing.

15              MR. GALLINA:   I understand.

16              THE COURT:    It's true I could only sentence  
17       him under one and I would choose the initial one.

18              MR. GALLINA:   Your Honor, the conversation  
19       that we had with the Assistant United States Attorney  
20       is he would be able to plead under section 841.

21              THE COURT:    On these things, Mr. Druker,  
22       I think the next thing that you better do is get  
23       a superseding information or a superseding indict-  
24       ment.  Well, anyway, number ten says that, "On or  
25       about February 9, 1969, the defendant Vincent Papa



1  
2 and Anthony Passero delivered to Anthony Loria, Sr.,  
3 in Eastern District of New York, delivered heroin  
4 to --".

5 That too is prior to 1971; right?

6 MR. GALLINA: That's correct, your Honor.

7 THE COURT: But I want to hear it from the  
8 defendant.

9 MR. ROSENBERG: Well, your Honor --

10 THE COURT: I know.

11 MR. ROSENBERG: -- the defendant has indicated  
12 that the extent of his guilt to which he is ready  
13 to plead guilty is under overt act twenty.

14 THE COURT: Okay.

15 "Number twenty - On or about the first day  
16 of June 1971, in the Eastern District of New York,  
17 Stanton Garland and the defendant Danny Ranieri and  
18 Vincent Papa, " and that's you, "had a conversation."

19 DEFENDANT PAPA: Yes, sir

20 THE COURT: "Number twenty-one - That on or  
21 about the first day of August 1971, within the Eastern  
22 District of New York, Stanton Garland met with and had a  
23 conversation with defendants Danny Ranieri and Rocco  
24 Evangelista." Did he?  
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DEFENDANT PAPA: Yes.

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THE COURT: Now, Mr Papa, tell me something about, you know all these defendants that I mentioned the names of.

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DEFENDANT PAPA: Yes.

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THE COURT: All of them that I mentioned?

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MR. DRUKER: Your Honor, he doesn't know every one personally.

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THE COURT: Do you know Anthony Loria, Sr.?

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DEFENDANT PAPA: Yes, sir.

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THE COURT: Do you know William Huff?

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DEFENDANT PAPA: No, sir.

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THE COURT: Do you know Nino Fazio?

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DEFENDANT PAPA: No, sir.

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THE COURT: Do you know Leonard Sperman also known as "Mojo"?

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DEFENDANT PAPA: No, sir.

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THE COURT: Do you know Danny Loria?

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DEFENDANT PAPA: Yes, sir.

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THE COURT: Do you know Vincent Papa yourself, you sure do, I guess. Virgil Alessi?

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DEFENDANT PAPA: Yes, sir.

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THE COURT: Paula Silvestri?

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DEFENDANT PAPA: Yes, sir.

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THE COURT: Salvatore Graziano?

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DEFENDANT PAPA: No, sir

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THE COURT: Anthony Loria?

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DEFENDANT PAPA: No.

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THE COURT: Ike Williams?

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DEFENDANT PAPA: No, sir.

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THE COURT: Edgar Leonard?

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DEFENDANT PAPA: No, sir.

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THE COURT: Anthony Passero?

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DEFENDANT PAPA: Yes, sir \*

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THE COURT: Henry Uvino?

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DEFENDANT PAPA: No, sir.

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THE COURT: Sally Paolillo?

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DEFENDANT PAPA: No, sir.

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THE COURT: Joseph Cesario also known as

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"Joe Dirt"?

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DEFENDANT PAPA: No, sir

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THE COURT: Ralph Loria?

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DEFENDANT PAPA: No, sir.

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THE COURT: Frank DiMatto?

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DEFENDANT PAPA: Yes, sir

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THE COURT: Jacqueline Gardner?

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DEFENDANT PAPA: No, sir.

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THE COURT: Nick Fasano?



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DEFENDANT PAPA: No, sir.

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THE COURT: Rocco Evangelista?

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DEFENDANT PAPA: Yes, sir.

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THE COURT: And Danny Ranieri?

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DEFENDANT PAPA: Yes, sir.

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THE COURT: Well, you with the ones that you say you know, you tell me, know that you conspired, made a conspiracy to violate certain laws.

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DEFENDANT PAPA: Yes, sir.

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THE COURT: In other words you got together with these others and you combined and conspired and agreed together to violate certain sections of the narcotics laws?

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DEFENDANT PAPA: Yes, sir.

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THE COURT: And you are telling me that that you were involved in the act after May, 1971, not before?

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DEFENDANT PAPA: Yes, sir.

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THE COURT: But you did combine a conspiracy with these other named defendants?

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DEFENDANT PAPA: Yes, sir.

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THE COURT: And your alleged conspiracy or combination of your confederates and your agreement was to deal in heroin, right?

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DEFENDANT PAPA: Yes, sir.

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THE COURT: And according to the overt acts that I read to you, particularly one of twenty and twenty-one, you had conversations with certain people, right?

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DEFENDANT PAPA: Yes, sir.

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DEFENDANT PAPA: Yes, sir.

THE COURT: Now, you understand that you have a right to a speedy and public trial by an impartial jury.

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DEFENDANT PAPA: Yes, sir.

THE COURT: And do you further understand that if you should go to trial that you would have the right to compulsory process to obtain witnesses in your behalf.

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DEFENDANT PAPA: Yes, sir.

THE COURT: And the right to be confronted by witnesses against you.

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DEFENDANT PAPA: Yes, sir.

THE COURT: And do you further understand that if you plead guilty in this cause, the Court

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2 has the power and may sentence you. What's the  
3 maximum on 841?

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MR. DRUKER: Fifteen.

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THE COURT: And no minimum. From zero to fif-  
teen and then there is a three years minimum,  
special period of parole, isn't there?

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MR. DRUKER: Yes, sir.

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THE COURT: Does that meet with your  
understanding?

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DEFENDANT:PAPA: Yes, sir.

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THE COURT: Counsel, do you have that  
section with you?

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MR. DRUKER: No, I don't have it with me,  
your Honor.

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THE COURT: Are you going to get it, Mr.  
Lazarus, please. I know there is a special period  
of parole and I think the minimum is three years.

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MR. ROSENBERG: I don't think it's a manda-  
tory sentence.

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THE COURT: Zero to fifteen.

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MR. ROSENBERG: I am aware of -- in  
addition to the parole.

THE COURT: Any period of jail, whatever  
it may be, there will be a three year special period



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2 of parole in addition That's the way I read that  
3 section. Now you better look at it -- Mr. Lazarus  
4 going out to get it -- and satisfy yourself.

5 Am I right?

6 MR. DRUKER: Special parole of at least  
7 three years.

8 THE COURT: If there is a penalty.  
9 I mean a jail sentence. I think it's a zero to  
10 fifteen, they just took out the mandatory minimums.

11 MR. GALLINA: It's 841(1) (a). Your Honor  
12 may read it.

13 THE COURT: I a it would be.

14 MR. GALLINA: Case of controlled sentence  
15 to schedule one or two, which is narcotic drug, such  
16 person be sentenced to imprisonment of not more than  
17 fifteen years or \$25,000 fine or both.

18 THE COURT: Yes, go ahead.

19 MR. GALLINA: If any person commits such a  
20 violation after one or more prior convictions --

21 THE COURT: No, I am not talking about that,  
22 beyond that.

23 MR. DRUKER: Any sentence imposing a term  
24 of imprisonment under this paragraph, shall in the  
25 absence of such, shall read section --

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THE COURT: There you are.

MR. ROSENBERG: May we approach the bench?

THE COURT: Yes.

( Discussion held off the record.)

THE COURT: Mr. Reporter, we will stop right there for now and we will continue it in a while. Give them a chance to talk to their defendant.

( Case recalled.)

MR. ROSENBERG: We are taking a plea under 174. Do you want to expunge the record.

THE COURT: Yes, we will expunge the record and start all over again.

MR. ROSENBERG: Shall we wait for the United States Attorney?

THE COURT: Yes, we will wait for him. First before we start, expunge the record, insofar as anything that has transpired up until now.

MR. ROSENBERG: The defendant wishes to withdraw his plea of not guilty heretofore entered and wishes to plead guilty under count one to cover the entire indictment.

THE COURT: We will start all over again on this. Mr Papa?



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DEFENDANT PAPA: Yes.

THE COURT: You are Vincent Papa, one of the defendants named in this superseding indictment obtained in 72 CR-473?

DEFENDANT PAPA: Yes, sir.

THE COURT: Your attorney, Mr. Rosenberg and Mr. Gallina have indicated to the Court that you wish to withdraw your plea of not guilty and to plead guilty to count one. Is that your understanding?

DEFENDANT PAPA: Yes, sir.

THE COURT: Do you understand what you are doing?

DEFENDANT PAPA: Yes, sir.

THE COURT: Now, Mr. Rosenberg and Mr. Gallina are your retained counsel.

DEFENDANT PAPA: Yes, sir.

THE COURT: You discussed this matter with them.

DEFENDANT PAPA: Yes, sir.

THE COURT: They have advised you of the nature of this case?

DEFENDANT PAPA: Yes, sir.

THE COURT: And the nature of your plea.



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DEFENDANT PAPA: Yes, sir.

THE COURT: The extent of your involvement  
in this.

DEFENDANT PAPA: Yes, sir.

THE COURT: Also the extent of punishment  
that could be meted out.

DEFENDANT PAPA: Yes, sir.

THE COURT: On that basis and their advice  
that they have given you as your attorneys, you are  
going to plead guilty to count one in satisfaction  
of the entire indictment.

DEFENDANT PAPA: Yes, sir.

THE COURT: Other than the promise that they  
made with regard to the other counts in this indict-  
ment, were there any other promises made to you?

DEFENDANT PAPA: No, sir.

THE COURT: How old are you, Mr. Papa?

DEFENDANT PAPA: 54.

THE COURT: Have you ever been in a hospital  
for any reason?

DEFENDANT PAPA: No, sir.

THE COURT: Recently?

DEFENDANT PAPA: No, sir.

THE COURT: Were you, yourself, ever involved

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2 in the use of drugs?

3 DEFENDANT PAPA: No, sir.

4 THE COURT: Before considering your plea  
5 or accepting your plea, the Court must read the  
6 charges against you, so I am going to read count  
7 one, please listen.

8 How far did you go in school?

9 DEFENDANT PAPA: Second term high school

10 THE COURT: So, you have no difficulty in  
11 language here?

12 DEFENDANT PAPA: Not really.

13 THE COURT: Do you understand me?

14 DEFENDANT PAPA: Very few words I don't  
15 understand, sir.

16 THE COURT: You read this indictment in its  
17 entirety and you know it all?

18 DEFENDANT PAPA: Yes, sir.

19 THE COURT: Count one reads as follows:

20 "On or about and between the first day of  
21 April 1967 and the 18th day of December, 1971, both  
22 dates being approximate and inclusive within the  
23 Eastern District of New York, the defendant<sup>s</sup> Anthony  
24 Loria, Sr., William Huff, Nino Fazio, Leonard Spearman  
25 also known as "Mojo", Danny Loria, Vincent Papa", and<sup>that</sup>  
/

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2 you, "Virgil Alessi, Salvatore Graziano, Anthony  
3 Loria, Ike Williams, Edgar Leonard, Henry Uvino,  
4 Sally Paiollia, Joseph Cesario, also known as "Joe  
5 Dirt", Ralph Loria, Frank DiAmatto, John Doe being  
6 a white male being known also as Nick Fasano and  
7 Rocco Evangelista and Danny Ranieri and others to  
8 the Grand Jury unknown, wilfully and unlawfully did  
9 conspire and combine and confederate with each other  
10 to violate prior to May 1, 1971, section 173 and 174  
11 Title 21 of the United States Code and on and after  
12 May 1, 1971, to violate section 812, 841(a)(1),  
13 841B(1)(a), 951(a)(1) and 952, of Title 21 of the  
14 United States Code."

15 "1. It was part of the said conspiracy that  
16 prior to May 1, 1971, the defendants unlawfully,  
17 wilfully and knowingly would conceive, conceal, buy,  
18 sell and facilitate the transportation concealment  
19 and sale of a quantity of narcotic drugs to wit,  
20 heroin, the exact amount thereof being to the Grand  
21 Jury unknown after said narcotic drugs had been im-  
22 ported into the United States in violation of section  
23 173 and 174 of the Title 21 of the United States Code."

24 "2. It was further a part of said conspiracy  
25 that on and after May 1, 1971, the said defendants



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2 knowingly and intentionally would distribute and  
3 possess with intent to distribute and dispense a  
4 schedule one narcotic drug controlled substance,  
5 the exact amount therefore being to the Grand Jury  
6 unknown, in violation of section 812, 841(a)(1),  
7 841B(1)(a), of Title 21 of the United States Code."

8 Then it goes on to list 24 overt acts. Now,  
9 I am going to read those overt acts that refer to  
10 you. However, in doing so, it's my understanding  
11 and if I am incorrect, please say so, Mr. Rosenberg,  
12 Mr. Papa, and Mr. Gallina. That I will skip those  
13 overt acts in which he is not mentioned, only because  
14 it has been consented by you three that I skip those  
15 overt acts, but they are part of the overt acts ob-  
16 tained in count one of this indictment.

17 MR. ROSENBERG: That's correct.

18 THE COURT: It's merely to save the time of  
19 the overt acts.

20 MR. ROSENBERG: Yes, your Honor.

21 THE COURT: I will read the overt acts, which  
22 he is involved namely nine, ten, twenty and twenty-one.  
23 Do you understand that, Mr. Papa?

24 DEFENDANT PAPA: Yes, sir.

25 THE COURT: You read the others?

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DEFENDANT PAPA: Yes, sir.

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THE COURT: Number nine, "On or about January 5th, 1969, the defendant, Vincent Papa", that's you, "delivered approximately one kilogram of heroin to the defendant, Anthony Loria, Sr., in the Eastern District of New York." Did you do that?

DEFENDANT PAPA: Yes, sir.

MR. ROSENBERG: Yes, sir.

THE COURT: Number ten, "On or about February 9th, 1969, the defendants Vincent Papa and Anthony Passero delivered heroin to Anthony Loria, Sr., in the Eastern District of New York." Did you do that?

DEFENDANT PAPA: Yes, sir.

THE COURT: It doesn't say what the amount is but you gave him some heroin; right?

DEFENDANT PAPA: Yes, sir.

THE COURT: You and Passero did that?

MR. ROSENBERG: Well, the defendant admits that he is doing it, Judge.

THE COURT: It says here that he and Passero. Did he with Passero?

DEFENDANT PAPA: Yes, sir.

THE COURT: Number twenty, "On or about the first day of June, 1971 in the Eastern District of

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New York, Stanton Garland and the defendant Danny Ranieri and Virgil Alessi had had conversation."

DEFENDANT PAPA: Yes, sir.

THE COURT: Twenty- one, "On or about the first day of August 1971 in the Eastern District of New York, Stanton Garland met with and had conversation with the defendant Danny Ranieri and Rocco Evangelista and Vincent Papa and Virgil Alessi." Is that correct?

DEFENDANT PAPA: Yes, sir.

THE COURT: Now, in the main part of the count, count one, you know a number of those defendants that I mentioned. Right?

DEFENDANT PAPA: Yes, sir

THE COURT: You certainly know Passero, Ranieri, Alessi and Evangelista. Right?

DEFENDANT PAPA: Yes, sir.

THE COURT: Among others.

DEFENDANT PAPA: Yes, sir.

THE COURT: And among all of those that you mentioned you know, plus these others that you know. you did combine to conspire?

DEFENDANT PAPA: Yes, sir

THE COURT: -- you wilfully and unlawfully



1  
2 and knowingly combined, conspired, confederated and  
3 agreed together and with each other to violate certain  
4 sections of the law that had to do with narcotics;  
5 right?

6 DEFENDANT PAPA: Yes, sir.

7 THE COURT: In other words, you got together  
8 in a conspiracy to do certain things about heroin;  
9 right?

10 DEFENDANT PAPA: Yes, sir.

11 THE COURT: No doubt about that?

12 DEFENDANT PAPA: No, sir.

13 THE COURT: Now, do you understand that you  
14 have a right to a speedy and a public trial by a  
15 impartial jury?

16 DEFENDANT PAPA: Yes, sir.

17 THE COURT: Do you understand further, that  
18 if you should go to trial that you would have a  
19 right to the compulsory process to obtain witnesses  
20 in your own behalf.

21 DEFENDANT PAPA: Yes, sir.

22 THE COURT: And to be confronted by witnesses  
23 against you.

24 DEFENDANT PAPA: Yes, sir

25 THE COURT: Do you further understand, that

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2 if you should plead guilty to count one of this  
3 indictment, the Court has the power to and may  
4 sentence you as follows. Now in the part that  
5 has to do with violation of section 173 and 174,  
6 your lawyer has explained to you, if it's between  
7 the penalty under 173 and 174 and under the 841  
8 statute.

9 DEFENDANT PAPA: They did.

10 THE COURT: The 173 and 174, you understand  
11 that occurred prior to May 1, 1971.

12 DEFENDANT PAPA: Yes, sir.

13 THE COURT: Those two overt acts that I read  
14 to you, nine and twenty particularly had to do with  
15 acts which occurred on January 5, 1969 and February  
16 9th, 1969, right?

17 DEFENDANT PAPA: Yes, sir.

18 THE COURT: So that those acts come within  
19 the purview of 173 and 174.

20 DEFENDANT PAPA: Yes, sir.

21 THE COURT: Do you understand this?

22 DEFENDANT PAPA: Yes, sir.

23 THE COURT: This had been explained to you?

24 DEFENDANT PAPA: Yes, sir.

25 THE COURT: With regard to 173 and 174, the

1  
2 the Court has the power to and may sentence you  
3 to prison for a period of not less than 5 years.  
4 Is it 5 rather than 20?

5 MR. DRUKER: Yes, your Honor.

6 THE COURT: For a period of not less than  
7 five years and not more than twenty years, plus  
8 a fine of up to \$25,000 or both.

9 DEFENDANT PAPA: Yes, sir.

10 THE COURT: You know that?

11 DEFENDANT PAPA: Yes, sir.

12 THE COURT: And do you know too that under  
13 that penalty you are not eligible for probation or  
14 parole. Do you understand that?

15 DEFENDANT PAPA: Yes, sir.

16 THE COURT: And that, for the part of the  
17 crime which occurred after May 1, 1971, which is  
18 part of that same count, the Court has the power  
19 to and may sentence you to a term of not more than  
20 15 years. In other words, no mandatory minimum, a  
21 period of not more than 15 years, from zero to 15,  
22 plus a fine of \$25,000 or both, plus the fact that  
23 the Court may also sentence you to a term of a  
24 period of special parole of not less than three  
25 years.



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DEFENDANT PAPA: Yes, sir.

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THE COURT: Do you understand that?

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DEFENDANT PAPA: I do.

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THE COURT: Now, the Court has two ranges of punishment here under 173 and 174 and under the 841 and other sections involved; do you understand that?

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DEFENDANT PAPA: Yes, sir.

THE COURT: You heard me give you maximum on both.

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DEFENDANT PAPA: Yes, sir.

THE COURT: The Court may at the time of the sentence choose either one.

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DEFENDANT PAPA: Yes, sir.

THE COURT: After hearing your rights, do you still desire to plead guilty?

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DEFENDANT PAPA: Yes, sir.

THE COURT: Has anyone made any promise or threats of any kind to induce you to plead guilty?

DEFENDANT PAPA: No, sir.

THE COURT: Other than the promise that this one count would be in satisfaction of any other count involved in this indictment.

DEFENDANT PAPA: Yes, sir

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THE COURT: Plus the fact that the United States Attorney may have some recommendations to make.

MR. ROSENBERG: As to the information.

THE COURT: We will come to that. That's another one.

MR. ROSENBERG: Before we had expunged the record, at this time the defendant will waive indictment under United States Section 7201 and 7203.

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(con't. on next page.)

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THE COURT: I want to finish with this one first. There has been no promise or threats of any kind to induce you to plead guilty?

DEFENDANT PAPA: No, sir.

THE COURT: Is this plea being made voluntary on your part?

DEFENDANT PAPA: Yes, sir.

THE COURT: After discussions with your lawyers.

DEFENDANT PAPA: Yes, sir.

THE COURT: And are you making this plea because you in fact did commit every act that count one of this indictment contained in 72-CR-473 alleges you committed.

DEFENDANT PAPA: Yes, sir.

THE COURT: Now, Mr. Rosenberg, is there any reason why this Court should not accept this plea on this indictment?

MR. ROSENBERG: No, your Honor.

THE COURT: Mr. Gallina?

MR. GALLINA: No, your Honor.

THE COURT: Mr. Druker?

MR. DRUKER: No, your Honor.

THE COURT: On the basis of colloquy between



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2 this court and this defendant and upon the admis-  
3 sions made to this court on the overt acts obtained  
4 in the count and upon the count itself and upon the  
5 representations made by the counsel for the defendant  
6 and for the the United States Attorney's Office, the  
7 Court is of the opinion that this is a basis in fact  
8 for accepting the plea to count one and on such  
9 finding accept the plea of guilty to count one of  
10 the superseding indictment obtained in file number  
11 72-CR-473.

12 MR. ROSENBERG: We want to waive probation  
13 report and have this court impose sentence today .

14 THE COURT: Okay. Now Mr. Papa, your lawyer  
15 just said that you want to waive a probation report.

16 DEFENDANT PAPA: Yes, sir.

17 THE COURT: You have a right to do that.

18 DEFENDANT PAPA: Yes, sir

19 THE COURT: But the Court would also want  
20 you to know that you have a right to await an investi-  
21 gation and presentence report which the Court would  
22 ordinarily get before sentencing you. At which  
23 time the Court would inquire into all the information  
24 obtained in the presentence report and I would adjourn  
25 the sentence at this time until such time if that's

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2 what you desire.

3 DEFENDANT PAPA: No, sir.

4 THE COURT: You waive that right and desire  
5 to be sentenced immediately?

6 DEFENDANT PAPA: Yes, sir.

7 THE COURT: You discussed that with your  
8 lawyer?

9 DEFENDANT PAPA: Yes, sir.

10 THE COURT: Mr. Rosenberg, do you make it  
11 in the form of a motion?

12 MR. ROSENBERG: Yes, I do.

13 THE COURT: You move to waive the presentence  
14 report and are prepared for sentence at this time?

15 MR. ROSENBERG: Yes, your Honor

16 Your Honor, there is another problem also,  
17 defendant has another charge pending against him and  
18 would like to waive indictment under that charge  
19 and plead guilty to count four of the information.

20 THE COURT: It's not an indictment. In  
21 other words, Mr. Druker, you are now handing up an  
22 information.

23 MR. DRUKER: I am, your Honor.

24 THE COURT: We don't have a CR number on it  
25 yet. A four count information under Title 26 of the

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United States Code section 7201 and 3. And information which obtains four counts against this defendant Vincent Papa. Is Vincent C. Papa and Vincent Papa one and the same person?

DEFENDANT PAPA: Yes, sir.

MR. ROSENBERG: The defendant would offer to plead guilty to count four to cover the entire information.

THE COURT: Is he at this time waiving indictment?

MR. ROSENBERG: Yes, he is.

THE COURT: Mr. Papa, the United States Attorney has just handed up to this Court a four count information charging you with violations of Title 26 of the United States Code, section 7201 and 7203. Have you had an opportunity to see this information?

DEFENDANT PAPA: Yes, sir.

THE COURT: And you know the contents of it?

DEFENDANT PAPA: Yes, sir.

THE COURT: Do you understand what it means to waive indictment?

DEFENDANT PAPA: Yes, sir.

THE COURT: Do you understand that in signing



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2 this waiver of indictment you waive the right to  
3 have this matter presented to a Grand Jury.

4 DEFENDANT PAPA: Yes, sir.

5 THE COURT: And that you are willing to let  
6 the government proceed against you on an information  
7 which it files against you, which it's doing now.

8 DEFENDANT PAPA: Yes, sir.

9 THE COURT: You know too, if it is presented  
10 to the Grand Jury, it may or may not indict?

11 DEFENDANT PAPA: I understand that, sir.

12 THE COURT: You are willing to take that  
13 chance and waive indictment at this time and plead  
14 on the information as it is presented?

15 DEFENDANT PAPA: Yes, sir.

16 THE COURT: With this understanding, is it  
17 still your desire to sign the waiver of indictment?

18 DEFENDANT PAPA: Yes, sir.

19 THE COURT: Okay, sign it.

20 THE CLERK: It is being signed and witnessed.

21 THE COURT: Signed by Mr. Papa and signed  
22 by the deputy counsel and Mr. Rosenberg signed as  
23 counsel.

24 THE COURT: Okay. The Court receives them  
25 and files them. Now, we have before us this infor-

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mation. Mr. Papa, how do you plead?

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DEFENDANT PAPA: Guilty, sir.

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THE COURT: To what?

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MR. ROSENBERG: Count four.

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THE COURT: To count four?

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DEFENDANT PAPA: Yes, sir.

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MR. GALLINA: To cover all counts in the

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information.

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THE COURT: Again, before we accept your

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plea or consider your plea, the Court must inform

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you of the charge against you and I am going to

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read count four.

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( Count four read.)

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THE COURT: Do you understand what I read

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to you, Mr. Papa?

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DEFENDANT PAPA: Yes, sir.

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THE COURT: Did you and your wife file

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this return saying that you had earned \$34,000 and

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that you owed \$10,000 plus, when in fact it was

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\$40,000 and you owed \$12,000 or more.

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DEFENDANT PAPA: Yes, sir.

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THE COURT: That you knew that when you

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filed this return?

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DEFENDANT PAPA: Yes, sir.

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THE COURT: And that it was a false and  
fraudulent return.

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DEFENDANT PAPA: Yes, sir.

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THE COURT: Do you understand that you have  
a right to a speedy and public trial by an impartial  
jury.

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DEFENDANT PAPA: Yes, sir.

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THE COURT: And do you understand that if  
you should go to trial, that you would have the  
right to compulsory process to obtain witnesses in  
your own behalf.

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DEFENDANT PAPA: Yes, sir.

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THE COURT: And that you would have the right  
to be confronted by witnesses against you.

DEFENDANT PAPA: Yes, sir.

THE COURT: What is the penalty under 271?

MR. DRUKER: Five years and \$10,000 fine.

THE COURT: Do you further understand that  
if you plead guilty to count four of this informa-  
tion, the Court has the power to and may sentence  
you to a term of imprisonment of up to five years  
and a fine in the sum of up to \$10,000 or both.

DEFENDANT PAPA: Yes, sir.

THE COURT: After hearing your rights, do you



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still desire to plead guilty?

DEFENDANT PAPA: Yes, sir

THE COURT: Has anyone made any promise or threats of any kind to induce you to plead guilty to count four of this indictment?

DEFENDANT PAPA: No, sir.

THE COURT: Is this plea being made voluntarily on your part?

DEFENDANT PAPA: Yes, sir.

THE COURT: Are you making this plea of guilty because you in fact did commit every act that count four of this information alleges you committed?

DEFENDANT PAPA: Yes, sir.

THE COURT: Mr. Rosenberg, is there any reason why the Court should not accept the plea of guilty to count four?

MR. ROSENBERG: No, sir.

THE COURT: You have discussed this with the defendant, Mr. Druker?

MR. DRUKER: I can think of no reason why the Court should not accept the plea.

THE COURT: On the basis of the colloquy between the Court and this defendant, and his admis-

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2 sion to this count four, the Court is of the opinion  
3 that there is a reasonable basis, in fact, for accept-  
4 ing the plea of guilty and so find and on such finding  
5 accepts the plea of guilty to count four of this in-  
6 formation.

7 MR. ROSENBERG: We will waive the probation  
8 report with respect to this charge also, Judge?

9 THE COURT: Now, Mr. Papa, is it your desire  
10 to waive the probation report here too?

11 DEFENDANT PAPA: Yes, sir.

12 THE COURT: And as I told you on the other,  
13 you have a right to delay sentence here until such  
14 time as a probation report is received by the court.

15 DEFENDANT PAPA: I understand that, sir.

16 THE COURT: You are willing to waive that  
17 and be sentenced at this time?

18 DEFENDANT PAPA: Yes, sir.

19 MR. ROSENBERG: Defendant is ready for sen-  
20 tence and there is no legal cause why sentence  
21 shouldn't be imposed at this time.

22 THE COURT: Okay.

23 Let's take the first one, 473, 72-CR-473 Mr.  
24 Vincent Papa, you are one of the defendants named  
25 in a superseding indictment contained to file number

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72-CR 473.

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DEFENDANT PAPA: Yes, sir.

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THE COURT: And the gentlemen standing to both sides of you are your retained counsel, Mr. Rosenberg and Mr. Gallina?

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DEFENDANT PAPA: Yes, sir.

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DEFENDANT PAPA: Yes, your Honor.

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THE COURT: Now, who shall talk, Mr. Rosenberg or Mr. Gallina?

MR. ROSENBERG: Your Honor, I'll rest entirely upon, - -

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THE COURT: Who is going to talk for him?

MR. ROSENBERG: I will.

THE COURT: Is there any reason why judgment should not be pronounced against Mr. Papa?

MR. ROSENBERG: No, sir.

THE COURT: Do you have any comment in respect as to what sentence should be?

MR. ROSENBERG: I'll rest upon the government, they are familiar with all the facts and circumstances. They are familiar with the defendant's background. I'll rest upon their integrity.



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2 THE COURT: Mr. Papa, is there any reason  
3 why sentence should not be pronounced against you?

4 DEFENDANT PAPA: No, sir.

5 THE COURT: Do you have any comment to  
6 make in addition to what your lawyer has said?

7 DEFENDANT PAPA: No, sir.

8 THE COURT: Now, Mr. Druker?

9 MR. DRUKER: The only thing I can say here,  
10 that this is a serious crime of course, one of the  
11 most serious, but counsel for both sides have been  
12 open with one another. In their pretrial discussion  
13 in this case, Mr. -- he was not caught in possession  
14 of any heroin, one of the witnesses against Mr. Papa  
15 has escaped federal custody and knowing this and being  
16 aware of this, he has chosen to plead guilty and take  
17 his chances.

18 I would recommend whatever leniency the court  
19 can render, at least knowing he had a fair shot of  
20 beating this on a trial and he is willing to plead  
21 guilty and take his medicine.

22 THE COURT: Well, with regard to this in-  
23 dictment, I will not sentence pursuant to section  
24 841, etc. I am going to sentence in accordance with  
25 173 and 174. Particularly since two overt acts in-

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volved here both allegedly refer to dates, in 1969, which is prior to the repeal of 173 and 174. And the penalty under 173 and 174 in my judgement is more severe and in view of the nature of this crime, I believe the more severe penalty ought to be imposed here. I understand from what you say Mr. Druker, that this defendant had been cooperative and your admission at this time that the case against this defendant isn't so very good, I shall take those things into consideration. All right.

Mr. Vincent Papa, on your plea of guilty to  count one, I think it is, yes count one, of the indictment of the superseding indictment contained in file number 72-CR-473, you are committed to custody of the Attorney General of the United States or his duly authorized representative who shall designate the place of confinement for a term of five years. You understand that under the penalty provisions which I told you earlier, about, you are not eligible under that section for any probation or parole.

DEFENDANT PAPA: I understand that, sir.

MR. ROSENBERG: With respect to the information, Judge, would you want to impose the sentence

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2 on that.

3 THE COURT: On the next here, the information.

4 MR. DRUKER: Your Honor, in consideration of  
5 the Court's sentence on that, I would move to dis-  
6 miss the remaining count against Mr. Papa in  
7 72-CR-473.

8 THE COURT: All right. All counts, other  
9 than count one in which this defendant is accused  
10 the counts are dismissed.

11 MR. DRUKER: Also, 72-CR-88, that's the  
12 indictment that was superseded by this, I would  
13 move to dismiss this entire indictment.

14 THE COURT: 72-CR-88 is dismissed against  
15 this defendant.

16 MR. DRUKER: Thank you

17 THE COURT: Now on this information which  
18 you have waived presentence report, right?

19 DEFENDANT PAPA: Yes, sir.

20 THE COURT: Okay. Now, is there any reason  
21 Mr. -- first of all, let me ask, this information  
22 that alleges you as Vincent C. Papa.

23 DEFENDANT PAPA: Yes, sir

24 THE COURT: Is that you?

25 DEFENDANT PAPA: Yes.



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THE COURT: The same as Vincent Papa in this other case.

DEFENDANT PAPA: Yes, sir.

THE COURT: All right. And you are the defendant named in this information and which you pleaded guilty to count four?

DEFENDANT PAPA: Yes, sir.

THE COURT: And the attorneys to both your right and left are your own retained attorneys?

DEFENDANT PAPA: Yes, sir.

THE COURT: And you want them to appear for you at this sentencing?

DEFENDANT PAPA: Yes, sir.

THE COURT: Now, Mr. Rosenberg, is there any reason why judgement should not be pronounced against Mr. Vincent C. Papa?

MR. ROSENBERG: No legal cause why sentence shouldn't be imposed.

THE COURT: Do you have any comments with respect to what the sentence should be.

MR. ROSENBERG: I would merely request that any sentence that this Court would impose would be concurrent with the previous sentence, and in view of the statements made by the government, they didn't

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2 have too much of a case to begin with and defendant  
3 has a five year sentence and I ask that this be  
4 concurrent.

5 THE COURT: Mr. Papa, is there any reason  
6 why judgement should not now be pronounced against you?

7 DEFENDANT PAPA: No, sir.

8 THE COURT: Do you have any comments with  
9 respect to the sentence should be and term and  
10 conditions, anything to what your lawyer stated?

11 DEFENDANT PAPA: No, sir.

12 MR. DRUKER: Your Honor, of course, the tax  
13 evasion is related to the other case insofar as the  
14 income and I would agree with counsel that as far as  
15 sentence is imposed, it should be concurrent.

16 THE COURT: Okay. Mr. Papa, on your plea  
17 of guilty to count four of the information which  
18 we have before us, which will be given a number,  
19 very soon, you are committed to the custody of the  
20 attorney general of the United States or his duly  
21 authorized representative who shall designate the  
22 place of confinement, for five years. Said sentence  
23 shall be concurrent to the sentence imposed on the  
24 previous case in 72 CR-473.

25 DEFENDANT PAPA: Thank you, your Honor.

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MR. ROSENBERG: I have one further application that the imposition of sentence would commence October 2nd.

THE COURT: I would come to that in a minute.

MR. DRUKER: I was just going to ask that the Court dismiss count 1, 2, 3 of the information.

THE COURT: Count 1, 2 and 3 in the information before the court are dismissed. The sentence imposed in this case shall run concurrent with the case of 72-CR-473.

MR. ROSENBERG: The execution of sentence starts as of October 2nd, Judge.

THE COURT: October 2nd.

MR. DRUKER: Mr. Rosenberg asked me about this earlier and in fairness to Mr. Papa, he has been here for every court appearance. I believe that he originally surrendered on these charges. He has known what he faced and I submit that he is not a bail risk.

I have no objection.

THE COURT: All right. Execution of the sentence is stayed until October 2nd, at 3:00 p.m. when Mr. Papa shall surrender to the United States Marshall's office at the Brooklyn office. You



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know where that is, Mr. Papa?

DEFENDANT PAPA: Yes, sir.

THE COURT: 3:00 on October 2nd, you surrender. Therefore commencement of your sentence imposed today

DEFENDANT PAPA: Thank you, your Honor

MR. DRUKER: Your Honor, the marshalls have asked me on occasion if it would be possible on occasion to make these at 10:00 a.m.

THE COURT: Do you have any objection?

MR. ROSENBERG: I'll work it out with the marshall.

THE COURT: You work it out any way you like. Bail continued. What's the bail on this one.

MR. DRUKER: On Mr. Papa, he is on \$50,000 surety bond, your Honor.

THE COURT: Bail continued.

MR. DRUKER: No objection.

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THE COURT: Good afternoon.

MR. LOPEZ: Mr. Gallina and myself are filing a notice of appearance on behalf of Virgil

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Alessi who is before the court.

THE COURT: Are you Mr. Alessi?

DEFENDANT ALESSI: Yes, I am.

MR. GALLINA: Your Honor --

THE COURT: Supposing we have Mr. Druker  
hand up something first.

MR. GALLINA: Yes, your Honor.

MR. DRUKER: Do you have the waiver.

THE COURT: Mr. Druker hand<sup>ed</sup> up a super-  
seding information naming Nino Fazio and Virgil Alessi  
with violations of Title 21 of the United States  
Code, section 841 (a) (1) and 841B (1)(a), which is  
a one count information, conspiracy count with  
five overt acts, right?

MR. DRUKER: That is correct.

THE COURT: Mr. Lopez and Mr. Gallina, you  
both have seen this information?

MR. LOPEZ: Yes, we are reading it now.

THE COURT: You better take time and read it  
to your defendant.

MR. GALLINA: Maybe have five minutes to spend  
some time with it?

THE COURT: Yes, you may.

MR. DRUKER: Thank you.

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( Five minute recess to read information.)

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MR. DRUKER: Nothing that affects the dispositio

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THE COURT: Virgil Alessi will be crossed out  
and your handing up as against one defendant Nino Fazio.

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MR. DRUKER: Yes, your Honor.

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THE COURT: Well, put it on for October 2nd.

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MR. LOPEZ: Yes, Judge

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MR. DRUKER: Judge, I think there are going  
to be some more dispositions in this case. I wonder  
if we might adjourn this for a short time and we will  
drafted some superseding informations.

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THE COURT: Okay.

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MR. GALLINA: For those defendants that are  
not going to have their case disposed of today, could  
we humbly suggest to the court that October 2nd might  
be a date to which the government would consent



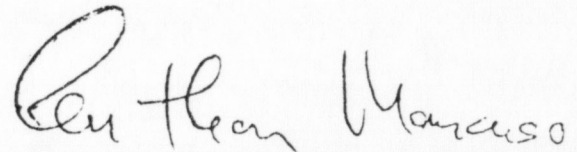
1 and to which we would desire.

2 THE COURT: Well, at that date I may not  
3 promise you a trial. But we will put it down  
4 for that date to set a date. That's the whole of  
5 473.  
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12 Certified to be true and  
13 correct transcript of proceedings.  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

VINCENT PAPA, SR., et al.,

Defendants.

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January 16, 1975,  
11 A.M.

Before:

Hon. Charles L. Brieant, Jr.,

District Judge.

Appearances:

PAUL J. CURRAN, ESQ.,

United States Attorney for the Southern District  
of New York,

John P. Cooney, Jr., Esq.,

Daniel Beller, Esq.,

Assistant U.S. Attorneys.

IVAN FISHER, ESQ.,

Attorney for defendant Papa, S.

NANCY ROSNER, ESQ.,

Attorney for defendant Stanzione.

FRANK A. LOPEZ, ESQ.,

Attorney for defendant Papa, Jr.

THEODORE ROSENBERG, ESQ.,

Attorney for defendant Euphemia.

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2 THE CLERK: United States of America v. Vincent  
3 Papa.

4 MR. COONEY: The government is ready.

5 MR. FISHER: The defendant is ready.

6 THE COURT: Those of you who represent co-defendants,  
7 if you wish to sit at the counsel table you may do so.

8 I think before we start this matter that you  
9 note their presence, please.

10 I might mention I filed a memorandum and order  
11 this morning denying the suppression motion by defendant  
12 Stanzone and anyone who wants a copy of that can apply  
13 to the court.

14 Mr. Laifer is not here, is he?

15 MR. ROSENBERG: No, your Honor.

16 THE COURT: I am in the process of having typed  
17 my findings and conclusions denying the motion to suppress  
18 the so-called million dollars. That will definitely be  
19 available for you by Monday morning and perhaps even earlier.

20 The fact finding I am making in this matter may  
21 be slightly different than Judge Duffy's decision, which  
22 I have now read, however we both come out to the same bottom  
23 line. You ought to all be apprised of that so that you can  
24 guide yourself accordingly in your proceedings.

25 If you will check with me before we break I may



1 rgh

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3

2 be able to bring you up to date on any other matters that  
3 may remain open which are important to you for your pre-  
4 trial considerations.

5 All right, let's get started with the witness.

6 MR. FISHER: If your Honor please, with regard  
7 to the due process aspects of the double jeopardy due process  
8 motions --

9 THE COURT: That is your October motion.

10 MR. FISHER: Yes, your Honor.

11 As I understand the position of the court we  
12 are not entitled to a hearing on the double jeopardy branch  
13 of those motions pre-trial.

14 THE COURT: I am prepared to discuss that with  
15 you. I think you perhaps state my position a little more  
16 starkly than is realistic and I am prepared to take that  
17 up with you in an informal conference if it is helpful to  
18 you.

19 MR. FISHER: Thank you, your Honor.

20 THE COURT: I want to take the use of this time,  
21 if possible, to take the proof on your second half of your  
22 October 21st motion -- is that the date of it?

23 MR. FISHER: Yes, your Honor.

24 THE COURT: I understood that Mr. Druker was going  
25 to come here and testify as to that.

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Musoff-direct

4

2 MR. FISHER: Mr. Druker will be available at  
3 2 o'clock, your Honor, but at this time the defendant  
4 Papa calls Wallace Musoff.

5 THE COURT: This is on the second half of the  
6 October 21st motion?

7 MR. FISHER: Yes, your Honor.

8  
9 W A L L A C E M U S O F F, called as a witness, having  
10 been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. FISHER:

13 Q Mr. Musoff, how are you presently employed?

14 A I am an attorney. I am a member of the firm of  
15 Wagman Cannon & Musoff at 136 East 37th Street, New York  
16 City.

17 Q How long have you been so employed, sir?

18 A Well, I have been associated in that office since  
19 December of 1969 and we formed our professional corporation  
20 approximately a year ago.

21 Q Prior to your employment and association with that  
22 firm, sir, how were you employed?

23 A I was the senior trial attorney in the Tax Court  
24 Division of the office of the chief counsel and prior to that  
25 I was a special agent with the Intelligence Division of the

1 rgh Musoff-direct

5

2 Internal Revenue Service.

3 Q Did there come a time, sir, when you came to  
4 represent the defendant Vincent Papa?

5 A Yes.

6 Q Was that in connection with a tax investigation  
7 being conducted against him in the Eastern District of New  
8 York?

9 A Yes, sir.

10 Q Did there come a time when you had a conversation  
11 with James O. Druker in regard to that investigation?

12 A Yes.

13 Q Who else was present?

14 A Theodore Rosenberg, another attorney that had  
15 been retained by Vincent Papa.

16 Q Do you recall approximately the date of this  
17 conversation?

18 A My diary indicates that it was August 18, 1972.

19 Q Where was this conversation had, Mr. Musoff?

20 A At Mr. Druker's office.

21 Q Please relate to us the substance, or if you can  
22 recall the words in that conversation, indicating who said  
23 what to whom.

24 A I believe I started the conversation by stating  
25 that I had been retained by Mr. Papa as tax counsel; that it



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2 was related to me that Mr. Rosenberg had been engaged in  
3 discussions with Mr. Druker concerning the disposition of  
4 all pending cases that Mr. Druker was in charge of and that--

5 Q Excuse me, when you say pending cases do you  
6 mean cases pending or pending cases against Mr. Vincent Papa?

7 MR. BELLER: Your Honor--

8 THE COURT: Sustained.

9 Q Did Mr. Druker indicate a defendant with regard  
10 to pending cases?

11 A Vincent Papa.

12 Q Continue, please.

13 A Mr. Rosenberg had said that --

14 MR. BELLER: Your Honor, as to what the witness  
15 knew from Mr. Rosenberg the government would object to  
16 hearsay testimony.

17 THE COURT: You are not giving us a conversation  
18 you had in the presence of Mr. Druker, is that right?

19 THE WITNESS: Yes. This is the conversation.  
20 This is what I am saying to Mr. Druker. I was explaining  
21 the background as to why I had requested the meeting with  
22 Mr. Druker at that time.

23 THE COURT: Why don't you let the witness start  
24 at the beginning of his discussions with Mr. Druker and  
25 give us the substance of what he said to Mr. Druker, what

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2 Mr. Rosenberg said in his presence and Mr. Druker's presence  
3 and what Mr. Druker said.

4 MR. FISHER: Yes, your Honor.

5 THE COURT: Why don't you start at the beginning  
6 again.

7 A I explained to Mr. Druker that I had been retained  
8 as tax counsel by Mr. Papa; that I had requested the meeting  
9 with Mr. Druker because Mr. Rosenberg hadn't related that  
10 in his prior discussions with Mr. Druker that Mr. Druker  
11 wanted to recommend -- somebody in the Internal Revenue  
12 Service insisted that Mr. Druker recommend a five-year  
13 sentence upon a disposition of all pending cases against  
14 Mr. Papa by means of his plea. I stated that I never heard  
15 of this procedure; that it seemed to be unusual for somebody  
16 in the Internal Revenue Service to dictate to the U.S.  
17 Attorney's office the type of sentence that should be  
18 recommended and that I wanted the opportunity to converse  
19 with that Internal Revenue Service employee.

20 Mr. Druker stated that the information was  
21 incorrectly relayed to me; that it was Mr. Druker's feeling  
22 that a five-year sentence should be recommended and nobody  
23 in the Internal Revenue Service had recommended this to him.

24 I said so that there would be no other misunderstanding  
25 Mr. Rosenberg had also relayed the fact that if Mr. Papa

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Musoff-direct

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2 were to plead to the -- to an income tax violation and  
3 the contemplated narcotics violation, would that resolve  
4 all pending cases against him, because if it didn't then  
5 he wouldn't be in a position to adequately defend himself  
6 against future charges once he was incarcerated.

7 Mr. Druker stated that he knew of no other pending  
8 cases except those in the Eastern District and that if  
9 Mr. Papa were to plead that it would dispose of all pending  
10 cases against him.

11 Then he gave an illustration. As I recall it  
12 Mr. Druker stated that if anybody who was connected with  
13 any of the pending cases against Mr. Papa were to come  
14 forward with additional information which could form the  
15 basis for an additional charge against him he would not  
16 pursue that information to prosecute Mr. Papa, but if that  
17 somebody who was then unknown to him were to come to him,  
18 say somebody who said that Mr. Papa was involved with the  
19 hijacking of wrist watches or something of that nature,  
20 then he would feel free to prosecute him.

21 THE COURT: He mentioned wrist watches?

22 THE WITNESS: I believe he did, your Honor.

23 THE COURT: You may continue.

24 Q Was anything else said with regard to bargaining  
25 or the disposition of the cases pending against Mr. Papa



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Musoff-direct  
cross

9

2 in the Eastern District at that meeting, sir?

3 MR. BELLER: Your Honor, I believe the witness  
4 has already answered.5 THE COURT: I am not certain he did, Mr. Beller.  
6 Have you give us the entire conversation on that  
7 day?

8 THE WITNESS: In substance, yes.

9 MR. FISHER: I have no further questions.

10 THE COURT: You may cross-examine.

## b2 11 CROSS-EXAMINATION

12 BY MR. BELLER:

13 Q When were you retained, Mr. Musoff, by Mr. Papa  
14 in connection with this tax proceeding?

15 A I was retained in approximately July of 1972.

16 Q What were the circumstances that led up to your  
17 being retained?18 A The circumstances were that there were a pending  
19 income tax investigation being conducted by the Intelligence  
20 Division in Brooklyn in coordination with the U.S. Attorney's  
21 office, that Mr. Fahringer had been retained I believe to  
22 handle that aspect and that I was to render technical  
23 assistance to him in connection with that investigation.24 THE COURT: Was this an audit of returns that we  
25 are talking about or was this arising out of the million

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2 dollars so-called?

3 THE WITNESS: To my knowledge it was not arising  
4 out of the million dollars. It was an independent --  
5 I don't know what the genesis of the case was, your Honor.  
6 It was an investigation by the criminal branch of the  
7 Internal Revenue Service, which is the Intelligence Division.

8 THE COURT: With respect to a particular return,  
9 though?

10 THE WITNESS: With respect to a number of years.

11 Q Are you aware how Mr. Papa or Mr. Fahringer became  
12 aware of the investigation?

13 MR. FISHER: Objection, if your Honor please.  
14 Irrelevant.

15 THE COURT: It may or may not be relevant. I  
16 will take it subject to connection.

17 MR. FISHER: Also calling for--

18 THE COURT: He can answer it yes or if he is  
19 aware.

20 A I am unaware.

21 Q Pardon me?

22 A I am not aware.

23 Q Your specialty is tax matters, is that correct?

24 A That's correct.

25 Q Now, you went to discuss the information you had

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Musoff-cross

11

2 received from Mr. Rosenberg with Mr. Druker on August 18th,  
3 is that correct?

4 A That's correct.

5 Q That was because you were particularly interested  
6 in this information with respect to an IRS agent who had  
7 made recommendations of sentence, is that correct?

8 A That's correct.

9 Q And it was the IRS practice that seemed to be  
10 unusual to you at that time, is that correct?

11 A That's correct.

12 Q All this was with respect to the tax case, is  
13 that correct?

14 A Pardon me?

15 Q All of your concern was with the tax case, is  
16 that correct?

17 A Primarily, yes.

18 Q Did you have expertise in any other matters?

19 A No, I did not.

20 Q Were you involved in any other investigations  
21 involving Mr. Papa?

22 A No, I was not.

23 Q So your concern was with the tax case exclusively,  
24 was it not?

25 A That is correct.



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2 Q Had you been a party to any plea negotiations  
3 prior to your meeting with Mr. Druker on August 18th?

4 A I was not.

5 Q But you were aware, were you not, that there  
6 had been plea negotiations prior to your meeting with Mr.  
7 Druker?

8 A Yes, sir.

9 Q In fact you were aware that there had been plea  
10 negotiations on behalf of Mr. Papa with Mr. Druker prior  
11 to your even being retained in the case, were you not?

12 A No, I am not aware of that.

13 Q You were concerned with possible misunderstandings  
14 between Mr. Druker and Mr. Rosenberg, is that correct?

15 A That is correct.

16 Q Your concern at that meeting with Mr. Druker  
17 was with the tax investigation with which you were exclusively  
18 concerned, was it not?

19 A Initially it was, but then I shifted over because  
20 I felt it was important for Mr. Papa, if he were to entertain  
21 rendering a plea of guilty that he be aware of all the facts  
22 and that they be accurately represented to him. In other  
23 words, if there was a misunderstanding with respect to the  
24 tax case I wanted to make sure that there wouldn't be a  
25 similar misunderstanding with respect to the other information

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2 Mr. Rosenberg had imparted to me.

3 Q Mr. Rosenberg was present at the meeting with  
4 Mr. Druker, was he not?

5 A That is correct.

6 Q Did Mr. Papa have any other attorneys?

7 A Present at that meeting?

8 Q With respect to any other investigations that  
9 you knew of.

10 A Yes, he did.

11 Q Who was that?

12 A Mr. Fahringer.

13 Q Mr. Fahringer and you with respect to the tax  
14 case, is that right?

15 A Right.

16 Q You say you were concerned that if Mr. Papa were  
17 sentenced to five years he would not be able to prepare  
18 for future cases, is that correct?

19 A That's correct.

20 Q Did you know of future cases?

21 A At that time--

22 MR. FISHER: Objection, your Honor, calling possibly  
23 for information clearly within the attorney-client privilege  
24 not waived by the testimony of this witness on direct  
25 examination.

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2 THE COURT: I think the question could be reframed  
3 to obviate the possible exception. I think there is a  
4 legitimate area of inquiry here, but I don't think the  
5 question is whether he knew of future cases. I think he  
6 can be asked as to whether anyone had said anything to him  
7 which gave him reasonable ground to believe that there might  
8 be future cases.

9 Q You knew at the time of the tax investigation,  
10 is that correct?

11 A That's correct.

12 Q And the narcotics investigation, is that correct?

13 A That's correct.

14 THE COURT: You see, I still don't know what the  
15 tax investigation was, what years it covered, what years  
16 he finally pleaded to.

17 Q Mr. Musoff, what--

18 THE WITNESS: Your Honor, I did not handle the  
19 actual plea. After I related this information I stepped out  
20 of the picture and I didn't play a part --

21 THE COURT: We have the information that he  
22 pleaded to downstairs.

23 THE WITNESS: In the decision making process.

24 THE COURT: You don't know what years they were  
25 examining?



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Musoff-cross

15

1  
2 examining?

3 THE WITNESS: Yes. They were examining years I  
4 believe from 1967 through 1971.

5 MR. BELLER: The government has no further questions.

6 THE COURT: Any redirect examination?

7 MR. FISHER: No, your Honor.

8 THE COURT: All right, Mr. Musoff, you are excused.  
9 (Witness excused.)

10 MR. FISHER: We have nothing further at this time,  
11 your Honor. We are waiting the arrival of Mr. Druker at  
12 about 2 o'clock.

13 THE COURT: Is Mr. Rosenberg going to testify?

14 MR. FISHER: No, your Honor.

15 THE COURT: All right, then at this time I under-  
16 stand that Mrs. Rosner has handed up a medical excuse for  
17 Mr. Stanzione.

18 MS. ROSNER: I have, your Honor. The note reflects  
19 that as recently as yesterday he was examined by his  
20 physician, I believe it is Dr. Londin, and is still running  
21 a 102 fever.

22 I would suggest, your Honor, as the government  
23 did when we attempted originally to schedule these motions,  
24 that we hold the motions to suppress immediately before  
25 the respective witnesses testify. My experience is, your

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2 Honor, that it never takes more than ten minutes at the  
3 outside and I don't see any objection. The government  
4 originally suggested the procedure and I think it is a  
5 situation where Stanzione should be present for this type  
6 of hearing.

7 THE COURT: The request poses somewhat of a  
8 problem here for me in this regard, that this is a case  
9 where I will be dealing with a sequestered jury and I don't  
10 think it is in the interests of anyone, the jurors, the court,  
11 the government or any defendant for jurors to have lengthy  
12 periods of time staring at the walls of the jury room while  
13 the court conducts what is supposed to be a brief hearing,  
14 but occasionally may extend and I don't cut anybody off if  
15 they have relevant proof to offer. I can't take a guarantee  
16 that the hearing will only take ten minutes.

17 MS. ROSNER: May I suggest this, then, your Honor.

18 THE COURT: I would like to meet your problem partway.  
19 One thought that occurs to me is that if he is not better  
20 tomorrow I might take the proof and not close the hearing.  
21 You and Mr. Stanzione can read the transcript and if when  
22 he returns, if I can take him at the end of the day or  
23 at a luncheon recess or something I might reopen the hearing  
24 and complete any matters which his reading of the transcript  
25 will call to mind. That would be one possibility.



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1  
2 MS. ROSNER: I have an alternative, your Honor,  
3 which may work just as well. I know your Honor contemplates  
4 long days because of our sequestered jury, but I would be  
5 perfectly happy, since the motion is made by us, to remain  
6 after the finish of the court day preceding the testimony  
7 of either of these witnesses or the first court day of trial  
8 or any afternoon convenient to your Honor and we could  
9 have the hearing then and not interrupt the jury's day or  
b3 10 have them inconvenienced.

11 THE COURT: You know I have to think about the  
12 supporting personnel. There is a limit to the number of  
13 hours which our dedicated staff people, the court reporters,  
14 the clerks, the marshals, all the other people can work.  
15 A couple of our defendants are in the House of Detention  
16 and they have to get there in time to have their dinner.

17 While I would like to get the case going as  
18 expeditiously as possible, and I have tried to be very  
19 emphatic with everyone, including the prosecutors, about  
20 my wishes in this regard, I think you come to a limit, you  
21 come to a practical limit of how much you can do on that.

22 It looks to me if what he has is the flu -- the  
23 doctor doesn't say what his condition is except that he has  
24 a cough and a general malaise and a fever of 102 degrees,  
25 which is not insignificant by any means, but it is not



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2 likely to be long standing and I wonder why you couldn't  
3 come in tomorrow and do it.

4 MS. ROSNER: That is fine, Judge.

5 THE COURT: Why don't you run a check on his  
6 health tomorrow and we will see. I will see what time we  
7 can arrange it.

8 Can the government have the people here tomorrow?

9 MR. COONEY: Yes, we could have our witnesses here.

10 May I just say, your Honor, I would like to serve  
11 on Mrs. Rosner now and on the court -- I have already given  
12 it to Mr. Lopez -- an affidavit in opposition to this motion.

13 THE COURT: I thought it was agreed that the court  
14 should take proof on this motion.

15 MR. COONEY: Well, your Honor, the government's  
16 position is that there hasn't been an adequate factual  
17 showing that there are bases for any allegation that there  
18 is improperly suggested out of court photographic identifica-  
19 tion. We suggest in our affidavit that an expeditious way  
20 to handle this motion would be for the government to turn  
21 over to the court and to the defense counsel, make available  
22 to defense counsel the spread of photographs that were shown  
23 to the various witnesses and if after these witnesses have  
24 testified at trial and established the basis for the  
25 contention of their prior contacts with these defendants,

1 rgh  
2 if there is any question as to the propriety of an out  
3 of court statement we could go further with the hearing,  
4 but we think pre-trial that the delivery to the court of  
5 the pictures should be sufficient.

6 THE COURT: I don't want to take anything ex parte.  
7 In fact as far as I am concerned you mark the exhibits,  
8 mark the pictures and give them to counsel. If counsel  
9 thinks the pictures are sufficiently representative so as  
10 not to be a ground for a grievance, I assume counsel will  
11 proceed accordingly.

12 MR. COONEY: I have no problem with that, your  
13 Honor. Perhaps we could do that.

14 THE COURT: I think you should do that and then  
15 Mrs. Rosner may respond.

16 MR. COONEY: Fine.

17 THE COURT: Would you take a look at his pictures.  
18 That should have been done earlier.

19 MS. ROSNER: Maybe if counsel can confer a little  
20 while we may be able to reach a disposition on it.

21 MR. COONEY: We may be able to resolve it.

22 MS. ROSNER: I don't offer that as a binding  
23 offer to stipulate, but we will explore it at least.

24 THE COURT: All right, I would like to take a  
25 short recess and I wonder if Mr. Cooney and Mr. Beller and

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2 Mr. Fisher would join me with the court reporter inside.

3 10:30 tomorrow if we have to go forward with that.

4 Is there anyone here sitting for Mr. Laifer?

5 MR. ROSENBERG: I will cover for him.

6 THE COURT: Mr. Cooney, would you see Mr. Laifer  
7 gets this so-called rap sheet? He ought to look at it because  
8 I am prepared to rule on it. Will you see that he gets it?

9 MR. ROSENBERG: Certainly, your Honor.

10 THE COURT: That is for Mr. Giamarino.



2 (In the robing room.)

3 THE COURT: I wanted to deal with your inquiry  
4 which you made outside as to what disposition I had made  
5 of these motions and I felt that since you had presented  
6 at least a part of your application by documents which on  
7 your application were sealed and by an in camera hearing,  
8 that perhaps you would prefer to have your inquiry stated  
9 in the same fashion so we don't create any problems.

10 MR. FISHER::Thank you.

11 THE COURT: I am in the process of writing a  
12 short memorandum on this subject. It has taken me longer  
13 than I expected. I want to hear what Mr. Druker says about  
14 the plea bargaining and I didn't really realize I was  
15 getting more testimony from Mr. Druker until yesterday.

16 I have a slight logistics problem. I think you  
17 are entitled to have the findings made on your motion to  
18 suppress before you go to trial. I would love to wait for  
19 the Court of Appeals in Tramunti, but I think it would be  
20 unfair. So I have on the production line a memorandum I have  
21 to write in Mr. Laifer's matter and the question of this  
22 Rule 12 motion that you have, or the two Rule 12 motions  
23 which I expect to deal with together.

24 Now, the bottom line of it is that I am planning  
25 to determine those motions at the end of the trial. I am

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2 stating the reasons for reaching that conclusion. Unless  
3 something unforeseen or something not set forth in your  
4 motion papers is introduced into it this afternoon I will  
5 exercise the discretion granted to the court under Rule 12  
6 subparagraph 4 of the Criminal Rules. If this creates  
7 a problem for you to the extent that you have some plan  
8 which requires you to have a formalistic decision from this  
9 court, then you could disclose it to me and I will put  
10 everything else aside and do this first. I assume you would  
11 rather have me tend to the money first, but when you asked  
12 me the question which you asked outside in the flat out  
13 fashion in which it was posed I assumed that maybe you  
14 were anxious to resolve of record where the court was going,  
15 and if that is your problem please tell me and both sides  
16 of this case will have no full cooperation to get it out  
17 for you faster.

18 MR. FISHER: That is the case, quite frankly, your  
19 Honor. To be candid with you, after your Honor indicated  
20 that you were considering not deciding the motions pre-trial,  
21 I think I did say that it was our position that the court  
22 had no discretion in that area. Your Honor has vast discretion  
23 in how you proceed, but our position is the court is required  
24 to decide the question one way or another pre-trial.

25 THE COURT: May we are quibbling over the use of



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2 the word "decide". Obviously the court has to deal with  
3 the motion, but I take the view that the court need not  
4 grant or deny relief with finality with respect thereto,  
5 but they hold these special issues for the disposition of  
6 the general issues. I am about 90 per cent completed in  
7 my research on this matter and while I was reacting in an  
8 impromptu and perhaps improvised fashion in my talks with  
9 you yesterday where I indicated what I thought I would do,  
10 I now find that there are reported cases which substantiate  
11 doing that and I expect to lay out the problem and reach  
12 the conclusions, cite the cases and give my reason. I am  
13 a little bit concerned about making a memorandum order,  
14 which I suppose would have to be sealed also, in view of  
15 the continuous requests to seal the Druker material, which  
16 I have honored in each case and which the government has  
17 not opposed. If you need that in a hurry I will get that  
18 for you as promptly as I can. All you have to do is to  
19 tell me. That is why I invited you in here.

20 MR. FISHER: I appreciate that. Might I just  
21 state this, your Honor. There is dictum mallah which does  
22 suggest in a double jeopardy motion the court may be well  
23 within its discretion and we insist the other way, but  
24 speaking candidly there is that dictum which suggests the  
25 court might well hold off.



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2 THE COURT: I would ask you to try to not reargue  
3 the merits. I am trying to meet whatever tactical or  
4 practical problems face you in this matter.

5 MR. FISHER: I appreciate that.

6 THE COURT: If they don't exist, as I assume  
7 perhaps they do from what you said outside, then tell me  
8 they don't exist and I will take a longer lunch hour.

9 MR. FISHER: They do exist, your Honor. We are not  
10 interested in an opinion on the million dollars at this point  
11 in time. We are much more interested in your ruling on  
12 the due process double jeopardy motions because--

13 THE COURT: Does that have to be sealed?

14 MR. FISHER: Quite frankly, your Honor, I would  
15 hope that the court would deal with each motion separately,  
16 and I will tell you frankly why. We were planning to go to  
17 the Court of Appeals in the event that your Honor does not  
18 decide the issue pre-trial.

19 THE COURT: I inferred from what you said outside  
20 that that might be the case. Of course that's what the  
21 elevators in the building are for. You are certainly free  
22 to do that. Just tell me so I can file it accordingly.  
23 That is really what I was trying to find out. That is  
24 the purpose of asking you, that plus finding out whether  
25 you wanted it sealed. I expect to deal with them in a

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2 single memorandum because I really think they are inextricably  
3 combined, but of course, since Stans v. Gagliardi, the  
4 Court of Appeals has showed a willingness to deal with  
5 these matters and, you know, if they want to they can. So  
6 I hope they realize that just like Stans v. Gagliardi we  
7 have this jury panel all set to come in here, all these  
8 taxpayers that we are going to have to lock up for three  
9 weeks.

10 All right, I think there is no purpose in discussing  
11 anything further with you at this time. I will make every  
12 effort to have my memorandum and order ready for you by  
13 the end of the day, with any luck. If there are proof-  
14 reading mistakes in it don't any of you take umbrage.

15 MR. FISHER: I am hardly in a position to do that,  
16 your Honor. Might I just say, so that I know -- we could  
17 be doing our research this afternoon -- your Honor is not  
18 deciding the merits of the issue, but merely indicating  
19 that you will not decide them at this point; is that roughly  
20 it?

21 THE COURT: I am basically relying on Rule 12,  
22 subdivision 4 and I am also relying on decided cases in  
23 this circuit and elsewhere. More of them, by the way,  
24 exist than I had thought. I had thought this was a question  
25 which people ordinarily didn't litigate, but I was surprised

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2 to find that this problem is not unusual. I am preserving  
3 all of your rights under both motions. At least that is  
4 what I propose to do, unless they tell me I can't, and giving  
5 my reasons for the exercise of the discretion in that regard  
6 and I will try to get it in your hands as promptly as  
7 possible.

8 Now, how long are you going to be this afternoon?

9 MR. FISHER: I don't think we will be longer than  
10 an hour at most with Mr. Druker.

11 THE COURT: All right, then I suppose I should  
12 see you again at 2:15. Try to be a little early.

13  
14 (Luncheon recess)  
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## AFTERNOON SESSION

2:30 P.M.

Present:

Mr. Beller

Mr. Fisher

Mr. Rosenberg

Mr. Vincent Papa

--

THE COURT: How about Mr. Laifer?

MR. ROSENBERG: He is not here, your Honor.

THE COURT: Are you prepared to proceed?

MR. FISHER: Yes, your Honor, I am.

THE COURT: Let's get the witness in.

MR. FISHER: James O. Druker.

Your Honor, in the interest of expediting matters I wonder if wouldn't be permissible to make the affidavit of Mr. Druker a part of the record.

THE COURT: It is a part of the record, but you can't determine contested facts on affidavits.

JAMES O. DRUKER, called as a witness, having been duly sworn, testified as follows:

MR. FISHER: So that the record is clear, your Honor, this testimony will be limited to the due process

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2 aspects of the previous motion filed in October and  
3 will not go into the double jeopardy contentions.

4 THE COURT: All right.

5 DIRECT EXAMINATION

6 BY MR. FISHER:

7 Q Mr. Druker, how are you presently employed?

8 A I am an Assistant United States Attorney for the  
9 Eastern District of New York.

10 Q How were you employed in 1972, sir?

11 A I was a special attorney with the organized  
12 crime and racketeering section of the United States Department  
13 of Justice.

14 Q Was that your first position with the government?

15 A With the federal government, yes.

16 Q When did you become so employed?

17 A In July of 1970.

18 Q When were you admitted to practice?

19 A November, 1969, in Massachusetts.

20 Q Are you familiar with a prosecution brought against  
21 the defendant Vincent Papa by the Strike Force in the  
22 Eastern District of New York?

23 A Yes.

24 Q What was your relationship, if any, to the  
25 prosecution?

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2 A I conducted the investigation and prosecution  
3 of Mr. Papa and others.

4 Q Were indictments filed in connection with that  
5 prosecution?

6 A There were.

7 Q Which were they?

8 A That I can recall specifically there were three.  
9 One I believe was 72 Cr. 88, which would have been filed  
10 around January of 1972. Then there was 72 Cr. 433,  
11 which would have been March or April -- probably April of  
12 1972. Then there was 72 Cr. 478, which was May or June of  
13 1972.

14 Q Would that be 72478 or 72473?

15 A 473 probably.

16 THE COURT: It is the one attached to the motion  
17 papers, isn't it?

18 MR. FISHER: Yes.

19 THE COURT: There is no argument about the genuine-  
20 ness of the indictment.

21 Q Now, you prepared an affidavit in connection  
22 with the proceedings herein?

23 A I did.

24 Q That was sworn to by you on November 11, 1974?

25 A Yes.



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1  
2 Q Therein you recite, do you now, these three  
3 affidavits?

4 A The three indictments do you mean?

5 Q I'm sorry, indictments, yes.

6 A Yes.

7 Q And you recite the dates that they were filed?

8 A Yes.

9 Q And the dates cited therein are correct, is that  
10 correct?

11 A To the best of my knowledge, they are.

12 Q With regard to 72 Cr. 88, that was an indictment  
13 based on the grand jury testimony of Paradiso?

14 A Of one Angelo Joseph Paradio.

15 Q And with regard to 72 Cr. 433, that was based on  
16 the testimony of Stanton Garland, is that correct?

17 A Principally, yes.

18 THE COURT: On the first indictment, was there  
19 other testimony besides Paradiso?

20 THE WITNESS: I would believe it would be  
21 principally Paradiso, but not exclusively and with regard  
22 to the second indictment principally Stanton Garland.

23 Q What other evidence was presented to the grand  
24 jury with regard to the Paradiso indictment?

25 A With regard to that indictment I believe there was

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2 the testimony of Suffolk or Nassau County police officers.  
3 I believe I recall a James Thompson and possibly one or  
4 two other officers that testified.

5 THE COURT: Just surveillance testimony of Paradio?

6 THE WITNESS: Some surveillance and I believe  
7 search warrants. They testified with regard to the fruits  
8 of some search warrants that were executed in that case.

9 THE COURT: Against this defendant?

10 THE WITNESS: Against co-defendants.

11 Q With regard to 72 Cr. 433, the Garland indictment,  
12 what other testimony, if any, was presented to the grand  
13 jury generally?

14 A I can't recall offhand. There may have been a  
15 Bureau of Narcotics and Dangerous Drugs agent. All that  
16 I can actually recall is Garland.

17 Q Now, you testified about indictment 72 Cr. 473  
18 which was referred to in your affidavit as a consolidated  
19 indictment.

20 A That's correct.

21 Q Consolidating the two previous indictments, is that  
22 correct?

23 A Yes.

24 Q Was testimony present to the grand jury beyond  
25 that which you have already discussed in connection with the



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2 first two indictments?

3 A To the best of my recollection, no. My best  
4 recollection is that it was the same grand jury that heard  
5 the prior two indictments and that they were asked to  
6 supersede those two indictments.

7 Q During your prosecution of these cases against  
8 Vincent Papa you met from time to time, did you not, with  
9 his attorneys?

10 A Yes.

11 Q Who?

12 A Variously it was Theodore Rosenberg, Esq.,  
13 Frank Lopez, Esq., Wally Musoff, Esq., and Gino Gallana.

14 Q Do you recall the point in the pre-trial happenings  
15 in connection with those cases that a witness for the government  
16 disappeared?

17 A Yes.

18 Q Was that on or about June 30, 1972?

19 A Yes.

20 Q Do you recall thereafter discussions with counsel  
21 for Papa with regard to a plea bargain?

22 A Yes. Both prior thereto and afterwards.

23 Q Did you have a conversation on or about August 18,  
24 1972, with Messrs. Rosenberg and Musoff?

25 A I can't recall the date. I had numerous



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2 discussions during that whole period in various combinations,  
3 Mr. Musoff alone, Mr. Gallina and Mr. Rosenberg, Mr. Lopez  
4 and Mr. Gallina. Some telephone and some in person. I  
5 couldn't give you the dates of any.

6 Q All right, in any event do you recall a con-  
7 versation where only those present were you, Mr. Rosenberg  
8 and Mr. Musoff?

9 A I have no specific recollection. I am not saying  
10 there wasn't, there probably was. I don't specifically  
11 recall any.

12 Q You recall, however, a conversation in relation  
13 to plea bargaining with regard to Mr. Papa had with Mr.  
14 Musoff?

15 A I recall --

16 THE COURT: You are talking of Mr. Papa had  
17 by yourself and Mr. Musoff.

18 THE WITNESS: Mr. Musoff came in fairly late in  
19 the game, as I recall, and his role--

20 THE COURT: Can't you just answer counsel's  
21 question. Do you recall any such three-way conversation?

22 THE WITNESS: I can't specifically. I recall  
23 discussions with Mr. Musoff, but I can't recall who else  
24 was present during those discussions.

25 Q Now, during the course of the various negotiations

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2 that you have described, these negotiations led ultimately  
3 to a plea bargain, did they not?

4 A Yes.

5 Q When in point of time was a bargain reached?

6 A I believe the bargain was finalized on August 18,  
7 1972. It may have been shortly prior thereto, but that  
8 would be my best recollection.

9 Q How, sir, do you fix that date?

10 A The first step in the bargain that we had con-  
11 summated was to be the surrender of three or four of Mr.  
12 Papa's co-defendants which took place I noticed on my file  
13 this week on August 21st of 1972. Something that I reviewed  
14 in my files indicated to me that I had met with them on  
15 August 18th. I can't recall what it was, but that would be  
16 the preceding Friday, which I believe is when the agreement  
17 was finalized. May have been shortly prior to that.

18 THE COURT: These were fugitives who were surrender-  
19 ing or people on bail or what was it?

20 THE WITNESS: These were fugitives. Part of the  
21 agreements was that these individuals would surrender them-  
22 selves on August 21, 1972.

23 Q This bargain that was arrived at on or about  
24 August 18, 1972, was arrived at in a conversation between  
25 you and counsel for Papa, is that correct?



2 A Yes.

3 Q Who specifically were present?

4 A Again at that time Mr. Musoff I remember had the  
5 lead, more or less, in the discussions. I am certain that  
6 he was present. I can't recall which, if any, or how many  
7 of co-counsel were present.

8 Q Please relate to us as best you can the conversa-  
9 tion as it related to the final bargain struck.

10 A All right, let me say my best recollection is  
11 that Mr. Rosenberg was present also, although I can't say  
12 for sure.

13 The final discussion was that -- and I don't  
14 recall which specific defendants. It was I believe somewhat  
15 of a package deal. Mr. Daniel Ranieri, Mr. Rocco Evangelista  
16 and I believe Mr. Anthony Passero, who at that time were  
17 fugitives, were to surrender to the government on August 21,  
18 1972. They were to be processed and printed. Subsequently,  
19 as part of the package the government was to dismiss the  
20 cases against them: Mr. Papa and I believe some other people,  
21 but I am not certain, but I know Mr. Papa was to plead guilty  
22 on September 5, 1972, to a one count conspiracy plea on  
23 the indictment. I believe it was a 173 or a 174 Title 21.  
24 The government was to recommend a five-year sentence for  
25 Mr. Papa and it was fairly well understood that the judge



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2 would listen strongly to the government's recommendation  
3 in the case. Mr. Papa would surrender on October 2, 1972,  
4 and as soon as I had received word of his surrender the  
5 government would dismiss against Mr. Passero, Mr. Ranieri and  
6 Mr. Evangelista.

7 THE COURT: Who was the fourth fellow?

8 THE WITNESS: Di Ametto, possibly. Possibly  
9 Frank Di Ametto.

10 Q Was a man named Virgil Alessi part of this  
11 bargain?

12 A Yes. With regard to Mr. Alessi, I believe the  
13 government was to dismiss against him, I am not a hundred  
14 per cent certain, and I believe Mr. Passero was to take  
15 a guilty plea rather than be dismissed. I can't remember  
16 all of the details in that regard.

17 Q Was anything else promised to counsel for Papa  
18 in return for his plea?

19 A Are we referring now to what the plea would  
20 cover him on?

21 Q Yes.

22 A Mr. Papa was advised-- he was concerned he said  
23 about -- through his attorney --

24 THE COURT: Was he there?

25 THE WITNESS: No. This would have been through Mr.

1 rgh  
2 Musoff and possibly Mr. Rosenberg and possibly one or  
3 more co-counsel. Mr. Papa, through his lawyers, advised  
4 that he was concerned about being indicted again on the  
5 same conspiracy. He wanted to know that once he took  
6 his plea and was sentenced, that that would be the end of  
7 his case. I advised Mr. Papa's lawyers that he was covered  
8 as far as this conspiracy went. I told him that the state  
9 of the law afforded him this; that if it should subsequently  
10 turn up next month or next year that a witness came to us  
11 with evidence against Mr. Papa on another piece of this  
12 same conspiracy, that he was covered on that. I further  
13 made clear to them that should a witness pop up who gave  
14 us evidence of unrelated criminal activities on Mr. Papa's  
15 part, even though it was during the same period of the  
16 conspiracy, that he was not covered on that.

17 Q Now, you used the word "covered" here. Is that  
18 the word you used then, if you can recall?

19 A No. What I would have said then is that he is  
20 covered on this conspiracy and he won't be indicted for  
21 reindicted or rearrested for any piece of this conspiracy.  
22 I think I went into a little more elaboration. I advised,  
23 for example, that if somewhere down the chain of the ladder  
24 it turned out that Mr. Loria had been selling heroin to  
25 five or six people who were not named in my conspiracy but



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2 that it developed or became clear that this was as a  
3 result of the same chain from Mr. Papa on up, that he  
4 would be covered on this. Anything to do with that conspiracy.

5 Q That conspiracy or crimes going out of that  
6 conspiracy were covered?

7 A That conspiracy or any of the overt acts contained  
8 in that conspiracy.

9 Q At that point in time Mr. Papa stood indicted, did  
10 he not, under an 848 count, which was the fifth count in  
11 72 Cr. 473?

12 A That's correct.

13 Q Was counsel for Papa told at that time by you  
14 that his plea as contemplated to the conspiracy count  
15 would satisfy count 5, the life count?

16 A Well, I believe he was told that his plea -- I  
17 think the understanding was-- was in satisfaction of the  
18 indictment.

19 Q And every count naming him contained therein, is  
20 that right?

21 A Yes.

22 THE COURT: You used the word "unrelated" in one  
23 of your recent answers. Is that the word you used in  
24 your discussions with these people?

25 THE WITNESS: To my best recollection, yes, sir.



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2 THE COURT: Did you qualify or modify or explain  
3 that word "unrelated" in any way?

4 THE WITNESS: I gave them a hypothetical which,  
5 if I recall, was that if a witness popped up and it were a  
6 witness that was part of this same conspiracy and he told  
7 us about Mr. Papa being involved in hijacking activities  
8 during that same period of time, even though there may be  
9 some of the same cast of characters involved, that he would  
10 not be covered on that.

11 THE COURT: Did you have a suspicion at that time  
12 that he had been involved in hijacking activities?

13 THE WITNESS: No, but I used the phrase to them.  
14 I said I didn't want to give him a carte blanche for every-  
15 thing that he may have done in the past. I said he is covered  
16 on this conspiracy and that's it. I do remember using the  
17 term "carte blanche" and telling them that he was not going  
18 to be covered on everything that he had done during that  
19 period of time or prior.

20 Q Do you recall posing a hypothetical involving  
21 stolen watches in a hijacking?

22 A Yes.

23 THE COURT: What was the basis for using a  
24 reference to hijacking? Did you connect Mr. Papa in some  
25 manner with hijacking?

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2 THE WITNESS: No. I just tried to pick something--  
3 it was just the first non-narcotic crime that entered my  
4 mind. It could have been bank robbery or something else.  
5 Hijacking just happened to hit me at the moment.

6 Q So with regard to or in consideration for Mr.  
7 Papa's plea to count 1 of the consolidated indictment,  
8 Mr. Druker, he was promised then that he would not be  
9 prosecuted for further aspects of that conspiracy, would that  
10 be a fair statement?

11 A Yes.

12 Q Even if they were to form substantive counts?

13 MR. BELLER: Your Honor, I object.

14 THE COURT: I will overrule the objection, although  
15 I think that the objective test has to be applied to what  
16 Mr. Druker told the attorneys. I will take the answer.

17 A I told them what I just testified to and I also  
18 told them that -- I said "I am giving him what the law  
19 affords him." I said he can't be indicted again on the  
20 same conspiracy. Beyond that and the one or two hypotheticals  
21 that I mentioned I didn't elaborate any further, nor did they.

22 Q Was there any discussion about the possibility  
23 of a substantive count involving transactions relating  
24 to the conspiracy to which he had pleaded?

25 A There may have been. I have no specific



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2 recollection of any.

3 THE COURT: What is your basis for saying there  
4 may have been?

5 THE WITNESS: Simply that I can't say a hundred  
6 per cent that there wasn't. I don't recall it at all. I  
7 have absolutely no recollection of it. I know that something  
8 was mentioned about overt acts from our conspiracy that he  
9 was covered as far as those were concerned.

10 Q As far as substantive counts?

11 A Well, the terms we used were overt acts.

12 MR. BELLER: Your Honor, I object to Mr. Fisher's  
13 characterization.

14 MR. FISHER: I'm sorry.

15 THE COURT: I think within reason Mr. Fisher  
16 may explore the witness' subjective thinking, but what is  
17 really more important is what did he say.

18 THE WITNESS: The term that we referred to was  
19 overt acts.

20 Q What I am trying to get at, was anything --

21 A I remember I said we are not going to pluck out  
22 an overt act out of this conspiracy and then turn around  
23 and reindict him on it.

24 Q So that Mr. Papa was promised as well, then, in  
25 return for his plea, overt acts in furtherance of this



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2 conspiracy would not give rise to subsequent individual  
3 prosecutions?

4 A That's correct.

5 Q Was there any discussion with regard to related  
6 investigations of Mr. Papa?

7 A Yes.

8 (Mrs. Rosner and Mr. Lopez entered courtroom  
9 at this point in time.)

10 Q What were they?

11 A In June of 1972, or thereabouts, my best recol-  
12 lection is June, I was advised that the Internal Revenue  
13 Service had a tax case going, or a tax investigation  
14 which they were proceeding with against Mr. Papa. I remember  
15 a special agent came up and asked me if I was handling  
16 the Papa narcotics case and then he advised me of his in-  
17 vestigation. Following this I disclosed the investigation  
18 to counsel for Mr. Papa and this in itself became a subject  
19 of the plea bargaining.

20 Q What was agreed upon between counsel for the govern-  
21 ment and the defendant with regard to that investigation?

22 A This was part of what we referred to previously  
23 as the package. Mr. Papa would be pleading to one count  
24 of an income tax information charging him with evasion  
25 and that he would be sentenced to five years on that, or

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2 that the government would recommend a five years' sentence,  
3 which was to be concurrent with the narcotics sentence.

4 Q And that plea, or the plea package would then  
5 satisfy whatever Internal Revenue investigation was then  
6 pending against Mr. Papa?

7 A That's correct. It was in satisfaction of the  
8 indictment which encompassed -- of the information, which  
9 encompassed all aspects of the IRS investigation.

10 THE COURT: Did you have a practice at that time  
11 to reduce such a bargain to writing?

12 THE WITNESS: No. It would generally -- subsequently  
13 we developed a practice of putting such agreements into a  
14 memo form or a letter to counsel with a copy to the court.  
15 At that time we did not.

16 THE COURT: Either in your own files or in your  
17 dealings with opposing counsel?

18 THE WITNESS: No. Earlier in this particular  
19 case I had done a memorandum to Washington to the Organized  
20 Crime Section asking for approval on a plea package which  
21 subsequently fell through because of the escape of one of  
22 my witnesses. That was the only -- the only part of the  
23 plea bargaining that was reduced to writing in this case.

24 THE COURT: A more rigorous bargain that was  
25 proposed.



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1 THE WITNESS: Yes.

2 THE COURT: Was any part of this bargain disclosed  
3 to the court?

4 THE WITNESS: Of the previous bargain?

5 THE COURT: No. This present one, the one you are  
6 testifying to.

7 THE WITNESS: Yes.

8 THE COURT: In what manner or by what means?

9 THE WITNESS: It was disclosed to the court by my  
10 going into chambers with the trial judge, stating to him  
11 what counsel had offered to us, stating the weaknesses of  
12 our case, the problems that we faced and asking if the court  
13 would go along with the government's recommendations  
14 in the case to which the court indicated that-- I think  
15 the judge's words were "I don't give out any guarantees,  
16 but you can tell counsel that I will listen very, very strongly  
17 to the government's recommendations in cases like this  
18 and they can pretty much be assured that the government's  
19 recommendation will be followed."

20 THE COURT: This occurred prior to the meeting  
21 that you are just testifying to?

22 THE WITNESS: This occurred after August 18th,  
23 I believe, and on the morning -- I would say that this  
24 occurred on September 5th, the morning of the actual pleas,  
25



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2 that I stopped into the judge's chambers out in Westbury  
3 and that if his answer was negative the whole thing would  
4 fall through.

5 Q Prior to your testimony here today, Mr. Druker,  
6 you have had conversation with me, have you not?

7 A Yes.

8 Q And therein have I ever asked you to check your  
9 files for the possible existence of any inter-office memo-  
10 randa or any inter-departmental memoranda with regard to  
11 the plea bargain package we have been discussing?

12 A Yes.

13 Q And you found none, other than the one you  
14 described to the court.

15 A That's correct, yes.

16 Q With regard to the one that you described to the  
17 court have you had occasion within the last few weeks to  
18 look at that?

19 A I would say a month or so ago I reread it.

20 Q And does that document in any way -- would it in  
21 any way assist you in your recollection of the events we  
22 are now discussing?

23 A No. That document simply had terms --

24 THE COURT: He just asked you whether it would  
25 assist you in refreshing your recollection. That's all. Your

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2 answer is yes or no.

3 A The answer is no.

4 Q In addition to the promises and conditions  
5 that you thus far described was anything said between counsel  
6 here regarding related investigations of Vincent Papa?

7 A I am not sure if I understand. In other words,  
8 did I tell him that we had other investigations or that  
9 we didn't have other investigations? Were any promises  
10 made with regard to the non-prosecution and/or non-existence  
11 of related investigations of Vincent Papa?

12 A I told counsel for Vincent Papa that this en-  
13 compassed what we in the Eastern District had going against  
14 him and that to my knowledge there were no further cases  
15 pending against Mr. Papa in the Eastern District of New York.

16 Q In fact, quoting from your affidavit on page 5,  
17 paragraph 10, you told counsel for Papa that "His pleas  
18 would satisfy related investigations of him in the Eastern  
19 District of New York"?

20 A I am not sure if the wording of that is quite  
21 accurate. I told him -- what I told him was that this is  
22 everything that I know about that's going against Vinny  
23 in the Eastern District of New York and he is covered on  
24 this stuff or these cases. I don't think the wording of  
25 that is quite accurate.



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2 Q Did you prepare the affidavit filed in connection  
3 with these proceedings dated November 11, 1974?

4 A I prepared them in the sense that I sat -- I  
5 wrote down my recollection of these events, I discussed them  
6 with Mr. Cooney and Mr. Beller afterwards and they asked  
7 me questions on a number of aspects of it. I believe Mr.  
8 Cooney prepared the affidavit, which I read, checked for  
9 accuracy and I think I might have made one or two minor  
10 corrections on it and following that I signed it.

11 THE COURT: At that time you were not working  
12 directly in the office of the United States Attorney of  
13 the Eastern District, were you?

14 THE WITNESS: At the time of the affidavit?

15 THE COURT: No. At the time of these discussions  
16 with Mr. Musoff and Mr. --

17 THE WITNESS: No. I was with the Strike Force,  
18 which was a separate entity.

19 THE COURT: Would you, in the course of your  
20 regular duties, know or have reason to know what investiga-  
21 tions or inquiries were pending against Mr. Papa in the  
22 office of the United States Attorney at that time?

23 THE WITNESS: Yes. It was joint filing and  
24 administratively everything was joint. I would have known  
25 about any other cases against Mr. Papa in that district.



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2 Q In words or in substance, Mr. Druker, were counsel  
3 for Papa told that his pleas would satisfy whatever investi-  
4 gations were then known to you in the Eastern District of  
5 New York?

6 A Yes.

7 Q And that representation --

8 THE COURT: To you or to the United States Attorney?

9 THE WITNESS: Well, when I said to me, it actually  
10 meant the same thing. It meant any investigations -- I  
11 represented that I had checked in the Eastern District of  
12 New York; that these were the only two cases that I knew  
13 of that were pending against Mr. Papa and that, therefore,  
14 this plea satisfied everything that we had going in the  
15 Eastern District of New York.

16 Q Now, during these discussions a pleading date  
17 was set, wasn't it?

18 A Yes.

19 Q And that was September 5, 1972?

20 A Yes.

21 Q Were your representations continuing to and  
22 including the pleading date?

23 A My representations as to what, everything?

24 Q Well, your representation regarding --

25 THE COURT: Why don't you go to the underlying

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2 question. Did you say anything additional or different  
3 to this defendant or his attorneys with respect to the  
4 plea bargaining between the date you have just testified  
5 to and the date that he pleaded guilty?

6 THE WITNESS: No, the question wasn't raised  
7 as to -- no one ever considered the question of what would  
8 happen if someone came in with a new case between the  
9 date of the finalization of the agreement and the date that  
10 he pleaded or was sentenced or surrendered.

11 THE COURT: Did you say anything to them on this  
12 subject--

13 THE WITNESS: No, I don't believe this was ever  
14 raised.

15 THE COURT: During that period.

16 THE WITNESS: No.

17 Q In any event you had told them that with regard  
18 to investigations known to the Eastern District of New  
19 York of Vincent Papa, the pleas that you were negotiating  
20 would satisfy each and every one of those?

21 A Yes.

22 Q We are talking now about mid-August of 1972,  
23 isn't that right?

24 A Yes.

25 Q You now know, do you not, that on or about July 17,



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Druker-direct

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1972, a man named Joseph Ragusa made a statement to a colleague of yours in the Eastern District Strike Force, William Murphy?

A Yes.

Q You are now familiar with the substance of that statement, is that correct?

A Yes.

MR. FISHER: May this be marked for identification for purposes of this hearing, your Honor?

THE COURT: Mark it.

(Defendants' Exhibit A marked for identification.)

MR. FISHER: May we have a stipulation from the government that this is a true and accurate copy of the statement submitted by Mr. Ragusa?

THE COURT: It was in the possession of the United States Attorney's office prior to September 5th, is that right?

MR. BELLER: On Mr. Fisher's representation that it was a copy of the statement submitted on the previous occasion --

MR. FISHER: I do so represent.

MR. BELLER: All right.

THE COURT: All right.

(Defendants' Exhibit A received in evidence.)



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Druker-direct

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Q Prior to September 5, 1972, the pleading date in the Papa case, were you specifically advised of the existence of Joseph Ragusa and his cooperation with your department?

A Yes.

Q Were you further advised that Mr. Ragusa had implicated in allegations the defendant Vincent Papa?

A Yes.

Q With regard to prior alleged narcotics transactions?

A Yes.

Q Involving somewhere around 50 kilograms of heroin?

A Yes.

Q This then was known to you prior to September 5, 1972?

A Yes.

Q Was that disclosed to Vincent Papa or his counsel, the existence of that investigation?

A No, it was not.

Q Any investigation in the Eastern District of New York of Vincent Papa would have been included in the term "related investigation," true?

MR. BELLER: Objection, your Honor.

THE COURT: Sustained.

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Druker-direct

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2 Q In the context of the conversation had with  
3 counsel for Papa, the phrase "related investigations"  
4 referred to investigations, all investigations of Vincent  
5 Papa, isn't that right?

6 MR. BELLER: Objection, your Honor.

7 THE COURT: Well, it is certainly objectionable  
8 as to form, but the difficulty presented is that the  
9 state of mind, the subjective state of mind of Mr. Druker  
10 may become relevant in this hearing and I think we ought  
11 to take it subject to connection or subject to a motion  
12 to strike. If a better question were framed I would  
13 allow him to testify to what his state of mind or viewpoint  
14 or opinion was with respect to what this Ragusa investiga-  
15 tion comprised.

16 MR. FISHER: I could do it a little more slowly,  
17 your Honor.

18 THE COURT: I will take it subject to connection  
19 and Mr. Beller may have an exception and a motion to strike.

20 Q Do you recall a conversation with Wallace Musoff  
21 where Mr. Musoff indicated that the plaintiff was concerned  
22 after having pled guilty to one or more charges in the  
23 Eastern District case and being incarcerated pursuant  
24 thereto he would have to fear subsequent prosecution on  
25 other charges?



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Druker-direct

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2 A Yes.

3 Q What was said by you in the context of those  
4 statements by Mr. Musoff?

5 A Mr. Musoff had referred to pieces of my conspiracy  
6 being taken out and causing him to be reindicted. I had  
7 told him that he was covered on the tax case, he was covered  
8 on the narcotics conspiracy and that no pieces could be  
9 taken out of that and used to form subsequent indictments,  
10 no overt acts out of my conspiracy nor the conspiracy itself.

11 Q And what about related investigations?

12 A I can't actually recall a discussion of that  
13 other than my simply telling him that these comprise my  
14 knowledge of everything that was going against Mr. Papa  
15 in the Eastern District and that he was covered insofar  
16 as these two cases were concerned.

17 Q I believe you previously testified today, and  
18 I want to make sure that your last statement --

19 THE COURT: Don't make a speech to him. Just frame  
20 another question.

21 Q The conversation with regard to related investi-  
22 gations that you had with counsel for Papa included, did  
23 it not, a promise that his pleas would satisfy all related  
24 investigations of Papa known to the Eastern District?

25 A Yes.



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2 Q The term related investigations referred, did it  
3 not, to any investigation of Vincent Papa?

4 MR. BELLER: Same objection.

5 A In substance, that was my promise.

6 THE COURT: I think I will have to sustain  
7 the objection to the question in the form which asked.

8 You did or did not know on August 18, 1972,  
9 of the existence of Exhibit A?

10 THE WITNESS: I knew of the existence but  
11 not the content.

12 Q Prior to September 5, 1972, you knew however  
13 of the substance of the content of Exhibit A, isn't that  
14 right?

15 A Yes.

16 THE COURT: Did you know on August 18th that that  
17 exhibit had any connection with Vincent Papa?

18 THE WITNESS: No. My only connection with that  
19 had been as a notary. I knew nothing of the contents  
20 nor did I know really who Mr. Ragusa was until after August  
21 18th.

22 THE COURT: How and under what circumstances  
23 did you learn of it after August 18th?

24 THE WITNESS: Mr. William Murphy, who had been the  
25 attorney that was handling Ragusa, was leaving the government.

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2 He had given his resignation and his cases were being  
3 distributed throughout the office. At that time this  
4 particular matter was given to me in that I had had the  
5 cases against Vincent Papa and I believe I was given a  
6 file on it. I was certainly given this exhibit.

7 THE COURT: What, if anything, did you do with  
8 that file?

9 THE WITNESS: I kept that file and I believe I  
10 opened my own file against Mr. Papa.

11 THE COURT: And this was all before September 5th?

12 THE WITNESS: Yes.

13 THE COURT: And you had it as an active file  
14 against Mr. Papa on September 5th?

15 THE WITNESS: No. I had Mr. Murphy's information,  
16 which I am not sure if it was a file or not. I know I  
17 didn't open a file on it until October 10th or 11th.

18 THE COURT: And then you opened it as an active  
19 file against Mr. Papa?

20 THE WITNESS: Yes. October 11th I believe was  
21 the date on which it was opened.

22 Q With regard to the active file, Ragusa v. Papa,  
23 colloquially, your Honor, there were two aspects to the  
24 Ragusa information regarding Papa, isn't that right?

25 There was revelations or allegations regarding to prior

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Druker-direct  
cross

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2 conduct of Mr. Papa--

3 A That's correct.

4 Q Together with indications of possible subsequent  
5 conduct of Mr. Papa?

6 A Yes.

7 Q The active file then related to those allegations  
8 of Mr. Ragusa regarding what was going to happen?

9 A In the future?

10 Q Yes.

11 A I believe so. I can't remember whether I actually  
12 separated them at that point or not.13 Q But the reason for the formation of an active  
14 file was because Mr. Ragusa had indicated that there would  
15 be subsequent narcotics activities between him and Papa,  
16 isn't that right?

17 A Yes.

18 MR. FISHER: No further questions.

19 THE COURT: Mr. Beller?

20 MR. BELLER: I will be very brief.

21 CROSS-EXAMINATION

22 BY MR. BELLER:

23 Q How was the tax investigation brought to Mr. Papa's  
24 attention?

25 A I believe in June of 1972 I brought it to his



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Druker-cross

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2 attention, I presume by advising one or more of his  
3 attorneys of its existence.

4 Q Did you discuss that matter with your superiors?

5 A Yes.

6 Q Who was your superior at that time?

7 A Mr. Dennis Dillon.

8 Q What was the reason you disclosed that investiga-  
9 tion to Mr. Papa?

10 A Number 1 -- there were two reasons. Number 1, I  
11 just couldn't disclose an IRS investigation without  
12 some authorization from the Internal Revenue Service itself  
13 and from Mr. Dillon and, number 2, it was what I felt to  
14 be an ethical obligation. I had represented in the course  
15 of the plea bargaining that the narcotics conspiracy against  
16 Mr. Papa was the only case that I knew about. Now another  
17 case came to my attention and I felt that I had a good  
18 faith obligation to reveal its existence.

19 THE COURT: Had IRS referred that to the United  
20 States Attorney for prosecution?

21 THE WITNESS: No. They had come directly to me.  
22 They had a Strike Force program at that time under which--  
23 and they also had a narcotics program.

24 THE COURT: This special agent was assigned to  
25 the Strike Force?

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Druker-cross

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2 THE WITNESS: He was assigned either to the Strike  
3 Force unit or to the narcotics unit, but in either case  
4 he came directly to us rather than through the United  
5 States Attorney. My concern was that if I couldn't reveal  
6 this case to defense counsel then I would have to simply  
7 tell them that whole plea package was out.

8 Q When you checked the files prior to August 18th,  
9 that is the Eastern District files, was the Joe Ragusa file  
10 disclosed to you in any way?

11 A Prior to August 18th?

12 Q That's correct.

13 A No.

14 THE COURT: Had you ever heard of Ragusa prior  
15 to August 18th?

16 THE WITNESS: Only -- I remember August 17th Mr.  
17 Murphy was in the next office to me. It was in the evening.  
18 He asked me to come in. It was some urgency. I think he  
19 introduced me to a Mr. Ragusa at that point. He said Mr.  
20 Ragusa made a statement which he would like me to notarize.  
21 I had Mr. Ragusa swear to it and I notarized it. Mr. Murphy  
22 had at that time a piece of paper over everything except  
23 for the bottom portion where it called for a signature.  
24 That was my sole introduction to Mr. Ragusa and I had no  
25 knowledge of the contents of the paper.



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Druker-cross

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2 Q Then some time between August 18th and September  
3 5th you learned of the contents of the affidavit, is that  
4 correct?

5 A Yes.

6 THE COURT: Was that normal, for you to notarize  
7 affidavits in that office where they were covered by paper?

8 THE WITNESS: Only with Mr. Murphy. Mr. Murphy--  
9 we used to tease him about it a great deal. He was extremely  
10 secretive and paranoid. He didn't want anyone else  
11 in the office to know anything about his case or what he  
12 was doing. It struck me as curious that he conspicuously  
13 put a piece of paper over the affidavit and left the  
14 bottom blank since I had the same clearances that he had,  
15 but nevertheless I notarized it and joked about it with  
16 the other attorneys in the office the following day, I  
17 believe.

18 Q Why were you the one who notarized that affidavit?

19 A I was either the only notary in the office at  
20 that point or one of two and I was in the next office to  
21 Mr. Murphy.

22 Q So it had nothing to do with your own investigation,  
23 is that correct?

24 A No.

25 Q Some time between August 18th and September 5th



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Druker-cross

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2 you learned of the Ragusa file, is that correct?

3 A Yes.

4 Q Did you have a conversation again with Mr. Dillon  
5 about that information?

6 A Yes.

7 Q What was the substance of your conversation  
8 with Mr. Dillon?9 A At that point I was faced with the same situation  
10 that I had with regard to the tax case. I asked Mr. Dillon  
11 whether or not we had an obligation to reveal this to  
12 the defense attorneys and we decided that for two reasons  
13 we didn't, one being that it would jeopardize -- that this  
14 related to information on something that was to happen sub-  
15 sequently and that if we advised defense counsel the new  
16 narcotics transaction would in all probability not take  
17 place. Secondly --18 THE COURT: This is a narcotics transaction that  
19 you thought he was going to conduct from the federal prison  
20 in Atlanta?21 THE WITNESS: No, this is prior to his surrender.  
22 We had been -- we had information that Mr. Papa intended  
23 to do one last big narcotics transaction before he surrendered.  
24 I was told before the date of his plea that I could expect  
25 some sort of a request for an adjournment on his surrender

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Druker-cross

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2 date and that if I got to it to consent to it so we could  
3 allow him the opportunity to conduct this transaction.  
4 So I felt that this would jeopardize security for me to  
5 reveal this and I further felt that this was something  
6 that was going to happen in the future. I wasn't actively  
7 investigating any past allegations wherefore Mr. Dillon  
8 and I agreed not to advise defense counsel of this.

9 Q In the discussion that you had with the judge  
10 in Westbury, was anyone else present?

11 A The judge's law clerk, to my best recollection,  
12 myself and I don't believe anyone else was present. I am  
13 not a hundred per cent certain on that.

14 Q How long did you spend with the judge?

15 A Five minutes.

16 Q What was the substance of the conversation  
17 with the judge?

18 A I told the judge that we had this offer from Mr.  
19 Papa. I told him that my narcotics case was extremely  
20 weak and probably a certain loser in that Stanton Garland  
21 had escaped. I told him that we had a very strong case against  
22 Mr. Papa, which was the only reason for the plea. I told  
23 him of the offer of defense counsel and asked whether  
24 he would go along with our recommendation of five years.  
25 The judge stated that he thought that this was extremely



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Druker-cross

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2 light for someone of Mr. Papa's record or propensities.

3 He stated "You had better get up there and make some sort

4 of a pitch on the record putting down some reasons why

5 I should be so lenient," he said, "Because I don't want

6 to take something like this on my back." I stated that

7 I would represent on the record the weaknesses of the

8 government's case and he stated "If you are willing to go

9 ahead and do that, then that's fine with me" and something

10 to the effect that if I thought it was in the best interests

11 of justice.

12 Q Mr. Druker, where was your office at that time?

13 A Our office was at 35 Tillery Street. The IRS  
14 side of the courthouse on the third floor.15 Q Is that in the same area as the United States  
16 Attorneys in the Eastern District?17 A The United States Attorney's office is on the  
18 opposite side of building G. It is actually two buildings  
19 connected by a common foyer.20 Q In your affidavit you state that "With respect  
21 to other investigations counsel to Vincent Papa were put  
22 on actual notice that my representations referred only to  
23 Eastern District of New York." Would you explain to the  
24 court how you limited the agreement.

25 A As I testified on direct I stated on a number



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2 of occasions that this is all that we have got going  
3 against him in the Eastern District. This covers him  
4 against everything that we have going against him in the  
5 Eastern District. Somehow the million dollars or thereabout  
6 that had been received from Mr. Papa earlier in the year.  
7 I believe I was asked about it and I stated "Look, you  
8 fellows know more about it than I do. I read about it in  
9 the newspapers. He is asking that he put a hold on it.  
10 It is in Southern District's bailiwick and I don't know  
11 what, if anything, they are going to do with it" and that's  
12 it.

13 Q Did any one of Mr. Papa's attorneys or Mr.  
14 Papa himself through someone else ever ask you to check  
15 across the river in the Southern District as to pending  
16 investigations?

17 A No.

18 Q Or as to an agreement by the Southern District  
19 to join in the plea bargaining?

20 A I was not asked to check with any other juris-  
21 diction to see what, if anything, was going on against Mr.  
22 Papa.

23 MR. BELLER: I have no further questions.

24 MR. FISHER: Briefly, your Honor.

25 THE WITNESS: Nor did I do so.

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Druker-redirect

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2 REDIRECT EXAMINATION

3 BY MR. FISHER:

4 Q In your conversation with Mr. Dillon with regard  
5 to the so-called Ragusa investigation, Mr. Druker, the two  
6 prings of the Ragusa information were discussed between you  
7 and Dillon, isn't that right?

8 A That's correct.

9 Q The one relating to the narcotics activities  
10 alleged by Ragusa about Mr. Papa in January roughly and  
11 February of 1972 being the past --

12 A Yes.

12 Q And with that there was no problem about disclosing  
14 to Mr. Papa?

15 A No, there wasn't.

16 Q Merely by virtue of the fact of disclosing  
17 the informer?

18 A Yes.

19 Q That was the only problem?

20 A Yes.

21 Q You told the court I believe in response to the  
22 court's questions that there were allegations that Mr. Papa  
23 would be dealing in narcotics between the date of his  
24 plea and the date of his surrender.

25 A Yes.

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Druker-redirect

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2 Q And these allegations came, did they not, from  
3 Mr. Ragusa?

4 A I believe so. I received them through an agent  
5 of the BNDD, who I am certain, although I don't recall  
6 for a fact, received them from Mr. Ragusa.

7 THE COURT: When did you get it from the BNDD?

8 THE WITNESS: It was shortly before Mr. Papa's plea.  
9 Just shortly prior thereto.

10 THE COURT: After August 18th?

11 THE WITNESS: Yes.

12 Q In the August 18th conference when there was  
13 a pleading date set for September 5th, was there also a  
14 surrender date agreed upon then?

15 A No. I think --

16 THE COURT: I thought you told me there was.

17 A The September -- on August 18th, thinking back,  
18 we weren't even able at that point to fix the plea date.  
19 We knew that he would plead and we knew that he would  
20 surrender and we were reasonably certain what the terms of  
21 the sentence would be. I believe Judge Travia was on vaca-  
22 tion at that point and we left it that I would set up the  
23 earliest possible surrender day -- the earliest possible  
24 plea date with Judge Travia. In fact I am certain he was  
25 on vacation because the individuals who were surrendered on



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Druker-redirect

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2 the following Monday surrendered to Judge Rayfiel or one  
3 of the other judges, so at that point my best recollection  
4 is that the dates were not fixed.

5 THE COURT: Was there an understanding that  
6 sentence was to be fixed on the date of the plea without  
7 the necessity of any pre-sentence report?

8 THE WITNESS: Yes. It was agreed that counsel for  
9 Mr. Papa would waive a pre-sentence report.

10 THE COURT: And that you would also on behalf of  
11 the government?

12 THE WITNESS: Yes.

13 THE COURT: I have to take a short recess. Is there  
14 very much more for this witness?

15 MR. FISHER: I have a few questions, but I think  
16 a recess would be appropriate.

17 THE COURT: All right.

18 (Recess.)

19 MR. FISHER: May I proceed, your Honor?

20 THE COURT: Yes.

21 BY MR. FISHER:

22 Q Mr. Druker, referring again to the information  
23 through the agent from Ragusa about a possible subsequent  
24 narcotics transaction involving Mr. Papa, was a surveillance  
25 conducted of Ragusa's home as a result of that investigation?

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Druker-redirect

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MR. BELLER: I object, your Honor.

THE COURT: I think he means Papa's home.

Q Ragusa's home and Papa's home.

MR. BELLER: I object, your Honor.

THE COURT: I may have to sustain the objection.

I don't see what it would be relevant. You can make an offer to shw that they did.

MR. FISHER: The offer of proof would be based upon the affidavit by Mr. Druker already filed, your Honor, to the effect that as a result of that information an 8-day, 24-hour surveillance with about 12 agents was employed on the Ragusa residence and on the Papa residence and all that ever happened on the basis of Ragusa's information was that Ragusa skipped away from the jurisdiction.

THE COURT: I think to complete the record there is no reason why he couldn't tell us that, but I don't want you to convert this hearing into --

MR. FISHER: That would be my last question.

THE COURT: All right. There is no dispute over this, is there?

MR. BELLER: No. We are just concerned about discovery.

THE COURT: I know what you are concerned about.

MR. FISHER: Perhaps we could stipulate and I would

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Druker-redirect

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2 have no further questions.

3 MR. BELLER: If it is in the affidavit --

4 THE WITNESS: No --

5 THE COURT: The witness wants to indicate that  
6 isn't so.7 THE WITNESS: I don't remember the exact term  
8 being eight days, and I hope my affidavit isn't to the  
9 contrary, but it was strictly limited to Mr. Ragusa's  
10 residence. At least that's what my directions were. I have  
11 no way of knowing what the surveillance was, but I know  
12 I instructed Agent Salvamino to conduct a 24-hour a day  
13 surveillance on Mr. Ragusa's residence, period.14 THE COURT: And he found no evidence indicating that  
15 a transaction was underway?

16 THE WITNESS: That's correct.

17 Q And in fact during that intensive surveillance  
18 Mr. Ragusa fled the jurisdiction, isn't that right?

19 A Yes.

20 MR. FISHER: No further questions.

21 MR. BELLER: Your Honor, may I have just one  
22 moment?

23 THE COURT: Certainly.

24 (Pause)

25 RECROSS EXAMINATION



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Druker-recross

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BY MR. BELLER:

Q Mr. Druker, in paragraph 12 of your affidavit you state "In September, 1972, either shortly before or after Papa's entrance of the plea, I was advised by agents of Drug Enforcement Administration that they had information that Ragusa had again been asked by Papa to act as a stash man." What is your best recollection at the moment as to the date you received that information?

A I couldn't, of course, fix an exact date. My best recollection would be some time between August 25th and September 1st.

Q You do believe it was before the plea, though, at this time?

A Yes.

MR. BELLER: No further questions, your Honor.

THE COURT: All right.

MR. FISHER: Nothing further, your Honor.

THE COURT: You are excused.

(Witness excused.)

MR. FISHER: The defendant Papa rests, your Honor.

THE COURT: All right. The government?

MR. BELLER: The government has no witnesses, your Honor.

THE COURT: All right. The matter is marked fully

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2 submitted.

3 Now, while I have you here --

4 MR. FISHER: Excuse me, your Honor, might I just  
5 do this. You recall, I know, that in the other proceedings,  
6 the grand jury testimony of Ragusa on July 18, 1972, was  
7 marked as an exhibit in that hearing. Could that be deemed  
8 marked for the purposes of this hearing as well?

9 THE COURT: Yes, but if you want that you ought  
10 to tell me what you are offering it to show so that I don't  
11 get the factual context too mixed around.

12 MR. FISHER: Surely, your Honor. To show that  
13 at least on July 18, 1972, there was an Eastern District  
14 investigation of Vincent Papa with regard to the Ragusa  
15 allegations.

16 THE COURT: I don't think that is disputed.  
17 Is it?

18 MR. BELLER: There was a matter in the office.  
19 I am not sure what it would be called, but there was.  
20 If there was grand jury testimony, then there was grand  
21 jury testimony.

22 THE COURT: When you take a witness, an informant  
23 and interview him and make an affidavit telling what he  
24 knows, have a file and put it before the grand jury,  
25 ordinarily I would call it an investigation.

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MR. BELLER: Whether it was intelligence information or intelligence or a case, at the moment I wouldn't say, but there was something in the office.

THE COURT: All right.

Now, I wanted to go back on some of the other loose ends that we have here. I am preparing and probably will file late today or early tomorrow a memorandum determining the motion of Vincent Papa, Jr. with respect to the suppression of the million dollars. Basically I am concluding with respect to him that he doesn't have standing to suppress the evidence.

I believe you indicated to me this morning, Mr. Fisher, that as far as you were concerned you and your client consent to a separate filing of my formal findings of facts and conclusions as to the suppression to be done in the near future.

MR. FISHER: Yes, your Honor.

THE COURT: And you don't care if they are done by Monday, as long as you know what the bottom line is.

MR. FISHER: That's all that counts at this point, your Honor.

THE COURT: I am relying upon that because I have a problem of taking care of some of these matters before we begin our presently scheduled trial.



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2 Now, we will be in recess briefly. I am closing  
3 this particular hearing, but I ask counsel to please  
4 approach the side bar.

5 MS. ROSNER: Your Honor, before we recess we  
6 have a couple of loose ends that have been made into neat  
7 bows.

8 THE COURT: Let me hear what your neat ends are.

9 MS. ROSNER: Mr. Lopez and I went to Mr. Cooney's  
10 office at 2 and he very graciously afforded us access to  
11 the agents who indicated what their testimony might be  
12 at a Wade type hearing and showed us the photos involved  
13 in the interviewing of the witnesses Raguda and Budy after  
14 interviewing the agents and getting a preview of how the  
15 hearing would be, I at least on behalf of Mr. Stanzone  
16 have concluded that we need not take up your Honor's time  
17 with it. We are fairly satisfied concerning the identifica-  
18 tion procedures. So I would withdraw my motion with your  
19 Honor's permission.

20 THE COURT: All right, I think I ought to direct  
21 Mr. Beller to inform all of the Assistant United States  
22 Attorneys that occasionally by revealing material matters  
23 can be shortened. The motions can be withdrawn.

24 MR. LOPEZ: Most respectfully, your Honor, in  
25 respect of Vincent Papa, Jr. I make the same application.

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THE COURT: The applications are granted.  
Mr. Beller and Mr. Fisher and the court reporter,  
please.

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2 (In camera discussion at the side bar.)

3 THE COURT: I expect to file a memorandum  
4 and order very shortly in connection with our discussions  
5 of this morning and I would really ask both of you to stand  
6 by and it will be given to you. You can stand by here in  
7 the courtroom or if it is more convenient for you to go to  
8 Mr. Beller's office. You will cause less suspicion that way  
9 if you do that. You can have the defendant Papa kept in the  
10 building until 4:30 if that is helpful to you.

11 Furthermore, I am marking my memorandum sealed.

12 MR. FISHER: Thank you, your Honor. Thank you very  
13 much.

14 THE COURT: But a copy of it will be given to  
15 each of you.

16 MR. BELLER: Should this portion be sealed as  
17 well?

18 THE COURT: Yes, and anything in chambers likewise  
19 and I trust that our docket sheets are complete. Our docket  
20 sheets in the Clerk's office show what is sealed and not  
21 sealed and I charge both of you gentlemen as lawyers in this  
22 matter to see to it. I am afraid there are some papers  
23 which the court has received which may not have gotten on  
24 the docket sheet at all. They have simply been held in  
25 chambers and dealt with by the court. In view of your



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2 present attention I want to have a full and correct docket  
3 sheet. Of course I want you to also and I am sure the govern-  
4 ment wants to.

5 MR. BELLER: Sure.

6 THE COURT: I would also like you to keep me fully  
7 apprised so we know where we are going and what we are doing.

8 Where will you both be?

9 MR. FISHER: I would like to confer with Mr.  
10 Papa downstairs for about a half hour and then I will go to  
11 Mr. Beller's office.

12 THE COURT: All right, then I will have my clerk  
13 telephone Mr. Beller as soon as I file my memorandum,  
14 which is only held up by mechanical difficulties.

15 MR. BELLER: Thank you, your Honor.

16 THE COURT: Will you each confer with the court's  
17 minute clerk to make certain that our dockets are correct.

18 (End in camera discussion.)  
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21  
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23  
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1 rgh

2 (In open court.)

3 THE COURT: All of you and the other defendants  
4 are to be here in person Monday morning at 10 o'clock.

5 One other thing while I have you here. Of course  
6 we don't have all the attorneys.

7 MR. FISHER: Everyone but Mr. Laifer.

8 THE COURT: We always have the question of challenges  
9 and I think you ought to talk with each other about  
10 challenges. Since we are going to have a sequestered jury  
11 and I am going to have to grant excuses for people whose  
12 circumstances in life don't permit them to be sequestered.  
13 I don't like to make it too onerous. On the other hand  
14 I think as attorneys you should all sit down with each other  
15 and see what you think is a fair arrangement and don't  
16 confront me the last minute with the problem on Monday  
17 morning. So I suggest you address yourselves to that when  
18 time permits. Otherwise we will be in recess until Monday  
19 morning.

20 So my record will be complete, I am marking  
21 Dr. Lewis Blondin's certificate dated January 15, 1975, as  
22 a Court's exhibit in this hearing.

23 (Court's Exhibit 1 marked in evidence.)

24 THE COURT: All right, Monday morning.

25

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WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Wallace Musoff	4	9		
James O. Druker	28	56	64	69

EXHIBIT INDEX

<u>Defendants</u>	<u>Identification</u>	<u>In Evidence</u>
A		50

Court

1	75
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA :

-v- :

74 Cr. 251  
(C.L.B., Jr.)

VINCENT PAPA, :

Defendant. :

-----x

GOVERNMENT'S MEMORANDUM IN  
OPPOSITION TO DEFENDANT PAPA'S  
MOTION TO DISMISS THE INDICTMENT

The Government respectfully submits this memorandum of law in opposition to the defendant Vincent Papa's motion to dismiss the indictment on grounds of Double Jeopardy and Due Process.

I. DOUBLE JEOPARDY

Invoking a recent decision of the United States Court of Appeals for the Second Circuit in United States v. Mallah, \_\_\_\_ F.2d \_\_\_\_ (2d Cir. Slip Op. 5475 September 23, 1974), Papa argues that Count One of the instant indictment, the conspiracy count, charges an offense for which he has already been

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convicted upon a guilty plea entered to Count One of Indictment 72 Cr. 473 in the Eastern District of New York, on September 5, 1972. In essence, Papa alleges that the conspiracy charge to which he pled guilty in the Eastern District of New York (hereinafter referred to as "the Eastern District Conspiracy"), is the same conspiracy as that alleged in this indictment (hereinafter referred to as "the Southern District Conspiracy"); accordingly, having once been convicted Papa argues that he may not now be tried again for the same offense.

A. THE MOTION SHOULD BE DECIDED  
AFTER TRIAL UPON A COMPLETE  
RECORD.

Double Jeopardy may be invoked successfully to bar a present criminal prosecution only if the defendant establishes that a prior prosecution was identical in law and in fact. United States v. Kramer, 289 F.2d 909, 913 (2d Cir. 1961); United States v. McCall, 489 F.2d 359 (2d Cir. 1973); United States v. Gioffi, 487 F.2d 492 (2d Cir. 1973), cert. denied as Cinzo v. United States, \_\_\_ U.S. \_\_\_, 42 U.S.L.W. 3629 (May 13, 1974; United States v. Nathan, 476 F. 2d 456 (2d Cir.), cert. denied



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414 U.S. 823 (1973); United States v. Pacelli, 470 F.2d 67, 72 (2d Cir. 1972), cert. denied 410 U.S. 983 (1973); United States v. Edwards, 366 F.2d 853 (2d Cir. 1966), cert. denied as Jakob v. United States, 386 U.S. 908 (1967); United States, 386 U.S. 908 (1967); United States v. Aviles, 274 F.2d 179 (2d Cir.), cert. denied as Genovese v. United States, 362 U.S. 974 (1960).

To be sure, the defendant was convicted in the Eastern District Conspiracy for the same offense in law as that charged in the Southern District Conspiracy -- a conspiracy to violate the narcotics laws, Title 21, United States Code, Sections 173, 174 and 846. The Eastern District Conspiracy and the Southern District Conspiracy, however, charge wholly different criminal conspiracies in fact, involving "criminal agreements [that] are indeed separate and distinct." United States v. Mallah, supra, Slip Op. at 5502.

In Mallah, the Court held after a consideration of the complete record of two trials, that appellant (Pacelli) sufficiently demonstrated that a charge of conspiracy to violate the narcotics laws for which he had been previously convicted in February, 1972 (Pacelli I), was the same in fact



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as a conspiracy to violate the narcotics laws for which he had been convicted in February, 1974 (Pacelli VI). The Court held the conviction in Pacelli VI barred by Double Jeopardy.

The teaching of Mallah and the cases already cited is that a district court, in ruling upon a double jeopardy motion, must examine the scope and content of the two conspiracies and determine whether they are part of a single conspiracy or whether they are, in fact, discrete offenses. Clearly, resolution of the question of the identity of the two conspiracies, the Eastern District Conspiracy and the Southern District Conspiracy, involved in this motion raises a factual dispute which should be decided by the Court only upon a complete record after trial.

Mallah itself strongly suggests that a district judge may rule on the question only after trial. In articulating the approach the Government should adopt in rebutting a claim of double jeopardy, the Mallah court stated:

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"If separate conspiracies become known at different times and are prosecuted separately, prosecutors should be prepared to demonstrate from the proof at the two trials that the criminal agreements are indeed separate and distinct."  
(Emphasis added) Id. at 5502

The policies supporting such a procedure are compelling. Pre-trial determination of a defendant's Mallah claim would require a court to hold a hearing which in many instances would preview the testimony to be heard later at trial, in the event the motion is denied. To hold such extensive pre-trial hearings would undermine the compelling public interest in conservation of judicial resources. Moreover, such a hearing would provide a defendant who had previously been convicted of a conspiracy, and other co-defendants named in the second indictment, with a device for obtaining complete discovery of the Government's case merely by making a motion under Mallah.

While in a different case a defendant's right not to be placed twice in jeopardy might outweigh other public interests and justify pre-trial hearings, the case at bar is a singularly appropriate one for post-trial hearings as suggested by Mallah. First, it is clear that regardless of



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the Court's decision on the double jeopardy question there will be a trial of Papa on the present indictment inasmuch as Count Two charges Papa with a substantive violation of the narcotics laws, which is not barred by double jeopardy. Therefore, if the Court grants Papa's double jeopardy motion and dismisses the conspiracy count against him, the Government will still proceed to trial on Count One against the other defendants, with Papa named as an unindicted co-conspirator, and on Count Two against Papa and Stanzone. Furthermore, as an unindicted co-conspirator, Papa's acts and statements in furtherance of the conspiracy would be admissible at trial against the other defendants. In other words, the evidence at the trial of this indictment will be the same whether Papa is a defendant or not. The Court, therefore, may decide the motion to dismiss at the end of trial without prejudicing the Government's interest in keeping Papa as a defendant until the complete record is made.

Papa will suffer no prejudice if the decision on his motion were deferred. See, United States v. Treadway.



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312 F. Supp. 307 (E.D. Va. 1970).<sup>\*</sup> If Papa is acquitted, after trial, the double jeopardy issue will be moot. If Papa is convicted, and if the Court rules at that time that the two conspiracies are, indeed, the same, Count One would be dismissed as against Papa. On the other hand, if the Court determines upon the full record before it that the motion to dismiss Count One is without merit and Papa is convicted, Papa would still have available a right of appeal on his double jeopardy claim, a remedy which the Court of Appeals considered adequate enough to protect the defendant Pacelli's rights in Mallah, since the Court's ruling on the double jeopardy issue came after trial upon a full and complete record. Also, since the defendant Papa will have to stand trial on the substantive charge in this indictment, he will not be subject to additional expense or embarrassment if

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\* In Treadway, defendants in a federal conspiracy case sought to interpose a prior state conviction under an indictment charging the same conspiracy as a bar to prosecution. The Court indicated that it believed the Double Jeopardy Clause of the Fifth Amendment applied to identical state-federal prosecutions but the Court declined to decide the motion pre-trial stating:

"At this stage of the proceedings all of the facts are not before the Court. Technically the conspiracy charged here is not identical to the one charged in South Carolina .... The question is whether the same acts constitute separate crimes. With the record as it now stands, the motions are denied with the right of defendants to raise the issue when the record is complete. 312 F. Supp., 810

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the decision on the motion to dismiss is deferred.\*

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\* For the reasons noted above the cases cited by the defendant to support his claim for a pre-trial hearing are simply not persuasive.

In United States v. Landsdown, 460 F.2d 164 (4th Cir. 1972) cited by Papa, a mistrial was declared by the trial court over defense objection after jury deliberations of eleven hours. Prior to dismissing the jury, however, the foreman stated that the jury was on the verge of a verdict, 460 F.2d at 167, 169, and another juror requested five more minutes of deliberation, Ibid. Prior to commencement of the second trial, defense counsel moved to dismiss on double jeopardy grounds, the motion was denied and the defendant appealed. The Court of Appeals stayed the trial, concluded that the question was appealable and reversed the order denying dismissal on the ground that the mistrial was not required by the doctrine of "manifest necessity", and that a re-trial was barred by Double Jeopardy.

In Landsdown the Court rejected a Government claim that double jeopardy issue was not appealable until after retrial. The Court held that Double Jeopardy protects a defendant not only from being convicted twice on the same charge, but from being tried twice on the same charge. Papa argues from this conclusion that he too has a right not to be tried on the conspiracy count in the Southern District Conspiracy if it is the same, in law and in fact, as the Eastern District Conspiracy. In Landsdown, however, the merits of the double jeopardy claim could be determined wholly apart from the proof at the second trial since, of course, there is never a question in the case of a retrial whether the new case is the same in law and fact as the first. Moreover, the Court of Appeals specifically limited its ruling to a narrow class of double jeopardy claim:



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"The Government also contends that [t]o hold ... a denial of a defendant's motion to dismiss ... appealable merely because of a claim of double jeopardy ... presents the alarming specter of any defendant being able to delay his retrial by saying the magic phrase of 'double jeopardy.' ...

"... Our decision will apply [however] only to that very small number of criminal cases in which a mistrial is declared against the wishes of the defendant." United States v. Landsdown, supra, 460 F.2d at 172.

Similar issues were raised in United States ex rel. Russo v. New Jersey, 483 F.2d 7 (3d Cir. 1973), cited by the defendant. Neither case, however, involved a Mallah-type double jeopardy claim where the Court is required to consider the facts of two cases clearly different on their face. Compare Landsdown and Russo with United States v. Treadway, supra.



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Finally, an examination of Rule 12(b), Federal Rules of Criminal Procedure indicates that resolution of Papa's Mallah motion should await the completion of trial. Rule 12(b) provides, in pertinent part, as follows:

12(b) The Motion Raising Defenses and Objections

(1) Defenses and Objections Which May be Raised

Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion.

....

(4) Hearing on Motion. A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue. ...

The Advisory Committee Notes on Rule 12(b), noting that failure to raise a claim pre-trial constitutes a waiver of the claim, indicate that double jeopardy is a defense which may be raised either before or at trial, and therefore is not subject to the waiver provision of Rule 12. At the very least, then, the drafters of Rule 12 did not contemplate pre-trial hearings on all double jeopardy claims.

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As indicated, Rule 12(b)(4) allows the district court the discretion to hold pre-trial hearings or to wait until the general issue has been tried prior to ruling on motions brought under the Rule. In United States v. Covington, 395 U.S. 57 (1969), the Supreme Court provided a context for the exercise of discretion under Rule 12(b), by concluding that a defense is "capable of determination without the trial of the general issue," Rule 12(b)(4), F.R.Cr.P., "if trial of the facts surrounding commission of the alleged offense would be of no assistance in determining the validity of the defense." Id. at 60 (emphasis supplied). In Covington, it was conceded that no factual dispute existed between the parties thereby allowing for pre-trial determination of a Fifth Amendment claim; here, the heart of the dispute between the Government and Papa is a factual one which should be resolved only upon a complete trial record, a record which clearly would be of considerable "assistance in determining the



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validity of the defense.\*

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\* Judicial treatment of motions to dismiss on statute of limitations grounds provides a persuasive analogy for the matter now before the Court. Professor Wright notes that when a motion to dismiss on the grounds of the statute of limitations is made, "the court has discretion, under Rule 12(b)(4), when to determine it."

"If the charge is for example, perjury, alleged to have occurred on a particular date, the matter can be disposed of on the motion before trial. If however, factual matters are involved, such as when a conspiracy ended or when an offense was consummated, the limitations question should be put off until the trial." 1 Wright, Federal Practice and Procedure, §193, p. 411; see, United States v. Tolub, 187 F. Supp. 705, 709 (S.D.N.Y. 1960, Kaufman, J.) Other cases, on related issues, have stated that the test is whether "a question of fact [is] so entwined with the events of each count that a decision should not be made prior to trial but postponed until trial." United States v. Callahan, 300 F. Supp. 519, 522 (S.D.N.Y. 1969); see also, United States v. Fargas, 267 F. Supp. 452, 457 (S.D.N.Y. 1967). This is simply another way of inquiring whether the issue is capable of determination without trial of the general issue, Rule 12(b), F.R.Cr.P., see United States v. Fargas, supra.

For a discussion of other cases, and the policies which strongly suggest that motions involving factual disputes which will be resolved at trial should be decided by the District Court after trial, see 1 Wright, Federal Practice and Procedure, §§193, 194 and accompanying footnotes.

United States v. H.E. Koontz Creamery, Inc., 232 F. Supp. 312 (D. Md. 1964) cited by the defendant is a case clearly limited to its facts. There, defendants had previously entered pleas of nolo contendere to a price fixing conspiracy (Fn. cont. on p. 12)



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\* Fn. cont. and were subsequently charged with a criminal conspiracy to violate the antitrust laws. The defendants argued that the two conspiracies were the same and that a second prosecution was therefore barred by Double Jeopardy. They asked for a pre-trial hearing on the merits. The Government, citing portions of Rule 12(b)(4) which note that with respect to hearings on Rule 12 motions, "An issue of fact shall be tried by a jury if a jury trial is required under the Constitution or an Act of Congress," took the position that only a jury at trial could decide the question of double jeopardy, and that the court was without power, either pre-trial or post-trial, to rule on the motion. This procedure, of course, would have placed the defendants in an impossible dilemma: on the one hand they would have had to argue to the jury that the conspiracy with which they were charged was the same as one for which they had already been convicted; and, on the other hand, to argue in the alternative that if the jury ruled against the defendants on the double jeopardy point they should acquit the defendants of the charge--to which they had in essence just pleaded guilty--on the ground that the Government failed to prove its case beyond a reasonable doubt.

Here, of course, the Government urges the court to decide the issue, but only after the Government has put its case completely on the record at trial.

B. ON THE FACE OF THE TWO INDICTMENTS  
THE EASTERN DISTRICT CONSPIRACY AND  
THE SOUTHERN DISTRICT CONSPIRACY ARE  
NOT "THE SAME IN FACT."

The Government contends that upon the trial of this case it will be clear that the Eastern District Conspiracy and the Southern District Conspiracy are separate and distinct. Even on the basis of information presently disclosable in a manner consistent with the discovery of the provisions of Rule 16, F.R. Cr. P. it is clear that the two conspiracies are not the same in fact.

1. Eastern District Conspiracy

Indictment 72 Cr. 473, filed on May 1, 1972, in the Eastern District of New York was a superseding indictment which charged Vincent Papa and Twenty-one other defendants in Count One with a conspiracy to

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violate the narcotics laws from April 1, 1967, to December 18, 1971, in violation of Title 21, United States Code, Section 173 and 174 (for acts committed prior to May 1, 1971) and Sections 846 and 943 (for acts committed after May 1, 1971). Counts Two, Three and Four of that indictment charged substantive violations of the narcotics laws involving persons other than Vincent Papa. Count Five charged Vincent Papa and four others, Virgil Alessi, Anthony Passero, Anthony Loria, Sr. and Frank Di Amato with engaging in a continuous criminal enterprise in violation of Title 21, United States Code, Section 848, an offense for which the penalty, had Papa been convicted, ranged from a 20-year minimum to life imprisonment.\* Papa and his attorneys successfully negotiated a plea to the conspiracy count and an accompanying "tax" information secured a dismissal of the 20-year-life continuing criminal enterprise count, and was sentenced pursuant

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\* Papa is a prior federal narcotics laws offender.



to agreement with the Assistant United States Attorney for the Eastern District to a five-year term of imprisonment.

## 2. Southern District Conspiracy

The instant indictment, 74 Cr. 251, was filed in the Southern District of New York on March 18, 1974. Count One charges Vincent Papa, Victor Euphemia, Anthony Stanzione, Jack Locorriari, Vincent Papa, Jr. and Peter Gismarino, with a conspiracy to violate the narcotics laws from December 1, 1967 to March 18, 1974 in violation of Title 21, United States Code, Section 173 and 174 (for acts committed prior to May 1, 1971).

With the exception of Papa himself, none of the twenty-two named defendants in Eastern District Conspiracy are defendants in the Southern District Conspiracy. Of 29 unindicted co-conspirators named in the Government's

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Paradise, to other distributors. In March 1971, Alessi and Papa also supplied Rocco Evangelista and Daniel Ranieri with multi-kilogram quantities of heroin. All four sold heroin to Stanton Garland until Garland's arrest in December 1971.

The indictment presently before the Court has its principal focus at Ditmar's Car Service in Astoria, Queens, with sales between 1968 and 1971 to an individual in the Bronx not mentioned in the Eastern District Conspiracy indictment or in the Grand Jury testimony upon which that indictment was based. Moreover, the Southern District Conspiracy involves the possession and distribution of approximately one hundred and sixty pounds of heroin (80 kilograms) which makes its first appearance in January, 1972 after the end of the Eastern District Conspiracy. This indictment charges, therefore, an independent, large-scale, criminal enterprise involving receipts, distinct from those involved in the Eastern District Conspiracy, to well over two

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Bill of Particulars in this indictment, only one individual  
is also named in the Eastern District Conspiracy.\* The  
dates of the two conspiracies and their geographic scope  
are different, and none of the overt acts charged in  
Eastern District Conspiracy are charged, or even hinted  
at, in Southern District Conspiracy.

The facts underlying the Eastern District Conspiracy are fully set out in an accompanying affidavit of Attorney for the Eastern District of New York, James O. Drucker. In essence, Indictment 72 Cr. 473, based almost entirely upon the Grand Jury testimony of Joseph Paradise and Stanton Garland, involved a conspiracy lasting from the Spring of 1967 to December 1971, the principal focus of which was the home of Anthony Loria, Sr. in North Babylon, Long Island and Prudentis Restaurant in Astoria, Queens. The conspiracy involved the supply of narcotics by Vincent Papa, Virgil Alessi, Anthony Passero, and Frank Di Amate to Anthony Loria, and the sale by Loria, through his agent

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\* Passero's involvement in this conspiracy is minimal and it is unlikely that his name will be mentioned at all during the trial. The United States had concluded that Anthony Passero was unrelated to the Southern District Conspiracy prior to the filing of the present motion.



million dollars.

It is clear that the two conspiracies, examined on their face, are different enterprises in all respects. The principals, the distribution points and the centers in which they operated are all different, see United States v. Aviles, supra, 374 F.2d at 124, as are the co-conspirators and the overt acts charged, see, United States v. McCall, supra, 408 F.2d at 342; United States v. Brown, supra, 403 F.2d at 10093; United States v. ..., supra, 316 F.2d, at 172.

In an effort to link this indictment with the Eastern District Conspiracy, Papa contends that the \$200,000 seized from him and from Joe DiNapoli on January 3, 1972, presently the subject of a suppression

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Papa's attempt to link this case to United States v. ..., 73 Cr. 1000, is a good example of the tortuous reasoning process in which the defendant asks the court to take. Papa, of course, was never placed in jeopardy under a framunt indictment in which he was named an unindicted co-conspirator. He says, however, that the Southern District conspiracy and the framunt conspiracy are the same, and since he was a co-defendant in framunt and in the Eastern District conspiracy, all three conspiracies are the same. Hallah, at its broadest reaches, was never intended to go so far.

Exhibit

During with respect to this indictment, was part of the evidence to be used in Eastern District trial, a fact, it is argued, that strengthens the claim that the Eastern District Conspiracy and Southern District Conspiracy are similar in fact. Although Papa asserts that the \$1,000,000 would have been used on the conspiracy count in the Eastern District, Drucker's affidavit accompanying this memorandum makes clear that the \$1,000,000, were it to be used at all, would have been offered only on the continuing enterprise charge in Count Five of the Eastern District case. That count, of course, states an offense different in law and in fact from the conspiracy charge in Count One and, accordingly, cannot be the basis of a double jeopardy claim.

Finally, Papa attempts to relate the two conspiracies he involved by claiming that Joseph Ragusa, a principal witness for the Government in this case, would also have been a witness for the Government in the Eastern District had their case gone to trial. Again, Drucker's affidavit, and other



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documents attached to this memorandum, clearly refute this proposition. The main witnesses in the Eastern District were to be Joseph Paradiso and Stanton Garland. When Garland disappeared, the Government agreed not to file a second offender information against Papa, thereby assuring him of a maximum five-year penalty, instead of a possible sentence of twenty-five years to life on the Section 848 charge (Count Five).

## II. Due Process

Papa also asks this court to dismiss the indictment against him on the grounds that all charges in this indictment were somehow satisfied by Papa's plea of guilty to the Eastern District Conspiracy and tax information. This claim is wholly without merit. As is clear from Drucker's affidavit submitted herewith, there was no explicit agreement between the Government and counsel for Papa that covered any matters which are the subject of this indictment. With respect to the \$1,000,000 seizure, Drucker specifically stated



that that money, which had been seized from Pape and DiNapoli on February 3, 1972, was in the hands of the Southern District of New York and that he could not and would not bind the Southern District with respect to its use of those funds. Although Drucker did promise Pape that Pape would not be indicted by the Eastern District for any pending investigation, he specifically stated that he had no knowledge of investigations pending in any other district and that he would not and could not bind any other district as to future prosecutions. Moreover, it is clear that the plea negotiations between the Government and Pape, which began in March, 1972, were completed before Drucker learned of Ragusa's testimony in the Eastern District Grand Jury and that Drucker considered the entire Ragusa matter to be separate and distinct from the charges pending against Pape, and therefore not covered by the plea.

In any event, counsel for Pape clearly were on notice that the agreement negotiated with Drucker in the Eastern District bound no other district. Drucker was explicit about that

... 341 Jr. ...  
 ... with respect to his discussion concerning  
 the \$1,000,000 seizure, and concerning his discussion  
 about investigations in other districts. If there  
 were any doubt on the matter counsel had only to refer  
 to a decision by Chief Judge Mishler of the Eastern  
 District of New York in United States v. Boulter, 359  
 F. Supp. 150, filed on August 10, 1972, twenty five days  
 prior to Papa's plea, holding that one assistant United  
 States Attorney is not authorized to act in behalf of another  
 district and that promises are limited to the district in  
 which they are made. 359 F. Supp., at 171.\*

The facts which support the Government's position  
 are developed in the affidavits that accompany this memo-  
 randum. The Government believes it has sufficiently demon-  
 strated that the charges in this indictment were not covered  
 by Papa's plea to the Eastern District Conspiracy. To the

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Judge Mishler noted that a contrary result had been  
 reached in United States v. Carter, 454 F.2d 462 (4th Cir.  
 1972), a case upon which Papa relies. Judge Mishler, how-  
 ever, expressly refused to follow the Carter opinion. Boulter  
 was affirmed by the Court of Appeals in United States v. Nathan,  
 475 F.2d 455 (2d Cir. 1973), but the issue here discussed was  
 not there decided.

about that the court will be assisted in deciding the Process motion by holding hearings on the question, the Government suggests that the appropriate time for such hearings and for determination of the issue is after trial after the complete record is before the court. A decision prior to trial would not spare the court the necessity of a full trial on the merits of the charges in the indictment since even if the indictment is dismissed against Papa the trial will proceed with the same evidence against the other defendants. Papa will suffer no substantial prejudice if the motion is deferred. The Government, however, and its witnesses will be seriously prejudiced by pre-trial hearings that inquire into the merits of the Government's case, thereby giving Papa and his co-defendants massive pre-trial discovery not contemplated by Rule 16, F.R. Cr. P.



CONCLUSION

The Government believes that the motion to dismiss on the grounds of Double Jeopardy and Due Process is without merit and is made principally as a means of securing massive discovery in advance of trial contrary to the letter and spirit of Rule 16, F.R. Cr. P. Accordingly, the Government urges the court to defer decision on the motion until the completion of trial when a complete record will be before the court. The Government's arguments may be summarized as follows:

- a) The conspiracies charged in the Eastern District and Southern District indictments are factually "separate and distinct". United States v. Mallah, supra;
- b) The indictments, when examined on their face and when analyzed in light of accompanying affidavits and the Grand Jury testimony that formed the basis of the Eastern District conspiracy, clearly charge separate factual offenses;

c) Upon completion of the trial of the instant indictment, the full record of the proceedings will make clear that the defendant Papa cannot sustain his burden of proving that the conspiracies are the same in fact;

d) The Government will be irreparably prejudiced if the motion to dismiss is decided prior to trial;

e) The defendant Papa will suffer no prejudice if decision on the motion is deferred until the court has a complete record before it upon which to decide the motion; and

f) Mallan itself, Rule 12(b), F.R. Cr.P., as the leading explanatory case under the Rule, United States v. Covington, clearly contemplate that hearings on a claim of this type be held after trial.

Accordingly, the Government ask that decision on the motion to dismiss and any hearings on the question await the completion of trial.

#### Due Process

The same considerations which require that hearings on the Double Jeopardy claim which inevitably will inquire into the nature of the Government's case, be deferred until after trial, compel the same conclusion with respect to Papa's Due Process motion. Pre-trial motions should not become the vehicle for circumventing the limiting standards articulated in Rule 16, F.R. Cr. P. Since the affidavits submitted by the Government on the Due Process questions demonstrate that the claim is without merit, since the Government will be prejudiced by pre-trial hearings, and since a trial of the issue will take place no matter what the decision in the motion, the Government urges



Report

the court to defer hearings on this question until after trial.

Respectfully submitted,

PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York  
Attorney for the United States  
of America

JOHN P. COONEY, Jr.  
DANIEL J. BELLER  
Assistant United States Attorneys  
-Of Counsel-

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

INDICTMENT

ANTHONY LORIA, SR.,  
WILLIAM HUFF,  
NINO FAZIO,  
GLENARD SPEARMAN a/k/a MoJo,  
DANNY LORIA,  
VINCENT PAPA,  
VIRGIL ALESSI,  
PAULA SILVESTRI,  
SALVATORE GRAZIANO,  
ANTHONY LORIA, JR.,  
IKE WILLIAMS,  
EDGAR LEONARD,  
ANTHONY PASSERO,  
HENRY UVINO,  
SALLY PAIOLLA,  
JOSEPH CESARIO a/k/a Joe Dirt,  
RALPH LORIA,  
FRANK DI AMATTO,  
JACQUELINE GARDNER, and  
JOHN DOE

21 U.S.C. 173  
21 U.S.C. 174  
18 U.S.C. 2  
21 U.S.C. 841  
21 U.S.C. 846

72 Cr 88

Defendants

THE GRAND JURY CHARGES:

COUNT ONE

On or about and between the 1st day of April, 1967 and the 6th day of August, 1971, both dates being approximate and inclusive, within the Eastern District of New York, the defendants ANTHONY LORIA, SR., WILLIAM HUFF, NINO FAZIO, GLENARD SPEARMAN a/k/a MoJo, DANNY LORIA, VINCENT PAPA, VIRGIL ALESSI, PAULA SILVESTRI, SALVATORE GRAZIANO, ANTHONY LORIA, JR., IKE WILLIAMS, EDGAR LEONARD, ANTHONY PASSERO, HENRY UVINO, SALLY PAIOLLA, JOSEPH CESARIO a/k/a Joe Dirt, RALPH LORIA, FRANK DI AMATTO, JACQUELINE GARDNER, JOHN DOE, being a white male known only as NICK FASANO, and others to the grand jury unknown, wilfully, unlawfully and knowingly did combine, conspire, confederate, and agree together and with each to violate prior to May 1, 1971, Sections 173 and 174 of Title 21, United States Code and on and after May 1, 1971, to violate Sections 812, 841(a)(1), 841(b), (1) (A), 951 (a)(1) and 952 of Title 21, United States Code.

1. It was a part of the said conspiracy that prior to May 1, 1971, the defendants unlawfully, wilfully and knowingly would receive, conceal, buy,

Exhibit A

sell, and facilitate the transportation, concealment and sale of a quantity of narcotics drugs, to wit: heroin, the exact amount thereof being to the Grand Jury unknown, after the said narcotic drugs had been imported and brought into the United States in violation of Sections 173 and 174 of Title 21, United States Code;

2. It was further a part of said conspiracy that on and after May 1, 1971, the said defendants unlawfully, wilfully and knowingly would distribute and possess with intent to distribute a schedule I narcotic drug controlled substance, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

#### OVERT ACTS

In pursuance of said conspiracy and to effect the objects thereof, the following overt acts were admitted in the Eastern District of New York and elsewhere:

1. On or about April 1, 1967 ANGELO JOSEPH PARADISO and the defendant MINO FAZIO purchased approximately 1/8 of a kilogram of heroin from the defendant ANTHONY LORIA, SR., in the Bronx, New York;
2. On or about December 25, 1968, ANGELO JOSEPH PARADISO received approximately 1/2 kilogram of heroin from the defendant ANTHONY LORIA, SR., in the Eastern District of New York;
3. On or about December 25, 1968, ANGELO JOSEPH PARADISO delivered approximately 1/2 kilogram to the defendant WILLIAM HUFF, in the Bronx, New York;
4. On or about January 15, 1969, ANGELO JOSEPH PARADISO delivered approximately 1/4 - 1/2 a kilogram of heroin to the defendant WILLIAM HUFF in New York, New York;
5. On or about January 15, 1969, the defendant JACQUELINE GARDNER received approximately 1/4 - 1/2 kilogram of heroin from ANGELO JOSEPH PARADISO, in New York, New York;
6. On or about September 15, 1970, the defendant EDGAR LEONARD received approximately 1 kilogram of heroin from ANGELO JOSEPH PARADISO, in Bronx, New York;



7. On or about January 3, 1969, the defendant GLENNARD SPEARMAN, a/k/a MoJo, received approximately 1/8 kilogram of heroin from ANGELO JOSEPH PARADISO, in Bronx, New York;
8. On or about November 3, 1969, the defendant JOHN DOE, a white male known only as NICK PASANO, received approximately 1/8 kilogram of heroin from ANGELO JOSEPH PARADISO in Bronx, New York;
9. On or about January 5, 1969, the defendant VINCENT PAPA delivered approximately one kilogram of heroin to the defendant ANTHONY LORIA, SR., in the Eastern District of New York;
10. On or about February 9, 1969, the defendants VINCENT PAPA and ANTHONY PASSERO delivered heroin to ANTHONY LORIA, SR., in the Eastern District of New York;
11. On or about January 1, 1969, the defendant SALVATORE GRAZIANO kept in his house approximately 1/4 kilogram of heroin, in the Eastern District of New York;
12. On or about January 1, 1970, the defendant ANTHONY LORIA, JR., kept in his house a quantity of heroin, in the Eastern District of New York;
13. On or about January 1, 1970, the defendant SALLY PAIOLLIA, in the Bronx, New York, received approximately 1/8 kilogram of heroin from ANGELO JOSEPH PARADISO;
14. On or about July 18, 1971, the defendants RALPH LORIA, and ANTHONY LORIA, SR., met with ANGELO JOSEPH PARADISO in the Eastern District of New York;
15. On or about July 29, 1971, the defendant WILLIAM HUFF had a conversation with ANGELO JOSEPH PARADISO, in the Bronx, New York.

(Title 21, United States Code, Sections 173 and 174  
Title 21, United States Code, Sections 846 and 963)

COUNT TWO

THE GRAND JURY FURTHER CHARGES:

On or about the 18th day of July, 1971, in the Eastern District of New York, the defendants RALPH LORIA, ANTHONY LORIA, SR., and DANNY LORIA unlawfully, wilfully, and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 1.7 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A)  
(Title 18, United States Code, Section 2)

A 227

AFFIDAVIT TO THE GRAND JURY

STATE OF NEW YORK  
COUNTY OF NEW YORK

COUNT THREE

-4-

THE GRAND JURY FURTHER CHARGES:

On or about the 29th day of July, 1971, within the Eastern District of New York, the defendant WILLIAM HUFF, unlawfully, wilfully, and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one gram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A)

COUNT FOUR

THE GRAND JURY FURTHER CHARGES:

On or about the 6th day of August, 1971 within the Eastern District of New York, the defendant WILLIAM HUFF unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 5 ounces of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841 (b)(1)(A)

AFFIDAVIT TO A TRUE BILL

STATE OF NEW YORK

COUNTY OF NEW YORK

EASTERN DISTRICT OF NEW YORK

FOREMAN

UNITED STATES ATTORNEY

they for

at

, Here

City of New York, by

and a true copy of same with his clerk or

and a charge of said office.

Subscribed and sworn to  
by me

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

INDICTMENT

21 U.S.C. 173  
21 U.S.C. 174

VINCENT PAPA  
VIRGIL ALESSI  
ROCCO EVANGELISTA  
DANNY RANIERI,

21 U.S.C. 846  
21 U.S.C. 963

Defendants

72 CR 433

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 1st day of March, 1971 and the 18th day of December, 1971, both dates being approximate and inclusive, within the Eastern District of New York, the defendants VINCENT PAPA, VIRGIL ALESSI, ROCCO EVANGELISTA and DANNY RANIERI, and others to the grand jury unknown, wilfully, unlawfully and knowingly did combine, conspire, confederate and agree together and with each other to violate prior to May 1, 1971, Sections 173 and 174 of Title 21, United States Code and on and after May 1, 1971, to violate Sections 812, 841 (a) (1), 841 (b) (1) (A), 951 (9) (1) and 952 of Title 21, United States Code.

1. It was a part of the said conspiracy that prior to May 1, 1971, the defendants unlawfully, wilfully and knowingly would receive, conceal, buy, sell, and facilitate the transportation, concealment and sale of a quantity of narcotics drugs, to wit: heroin, the exact amount thereof being to the Grand Jury unknown, after the said narcotic drugs had been imported and brought into the United States in violation of Sections 173 and 174 of Title 21, United States Code;

2. It was further a part of said conspiracy that on and after May 1, 1971, the said defendants unlawfully, wilfully, and knowingly would distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841 (a) (1) and 841 (b) (1) (A) of Title 21, United States Code.

Exhibit C



OVERT ACTS

In pursuance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Eastern District of New York and elsewhere:

1. On or about March 1, 1971, in Queens in the Eastern District of New York, Stanton Garland purchased a quantity of heroin from the defendant DANNY RANIERI.

2. On or about the 30th day of March, 1971 in Queens in the Eastern District of New York, the defendant DANNY RANIERI delivered a quantity of heroin to Stanton Garland.

3. On or about the 15th day of April, 1971, in Queens in the Eastern District of New York, the defendant DANNY RANIERI delivered a quantity of heroin to Stanton Garland.

4. On or about the 25th day of April, 1971, in Queens in the Eastern District of New York, the defendant DANNY RANIERI delivered a quantity of heroin to Stanton Garland.

5. On or about the 1st day of June, 1971, in the Eastern District of New York, Stanton Garland and the defendants, DANNY RANIERI, VINCENT PAPA, and VIRGIL ALESSI had a conversation.

6. On or about the 1st day of August, 1971 in the Eastern District of New York, Stanton Garland met with and had a conversation with the defendants DANNY RANIERI, ROCCO EVANGELISTA, VINCENT PAPA and VIRGIL ALESSI.

7. On or about the 8th day of September, 1971, in the Eastern District of New York, Stanton Garland and the defendants DANNY RANIERI, VIRGIL ALESSI and ROCCO EVANGELISTA met and had a conversation.

8. On or about the 13th day of December, 1971, in New York City, Stanton Garland and the defendants DANNY RANIERI and ROCCO EVANGELISTA had a conversation.

9. On or about the 14th day of December, 1971 in the Eastern District of New York, the defendant ROCCO EVANGELISTA delivered a quantity of heroin to Stanton Garland.

(Title 21, U.S.C., Sections 173 and 174)  
(Title 21, U.S.C., Sections 846 and 963)

A TRUE BILL

FORWARDED

ROBERT A. ROSE

UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

SUPERSEDING INDICTMENT

✓ ANTHONY LORIA, SR.	21 U.S.C. 173
✓ WILLIAM HUFF,	21 U.S.C. 174
✓ NINO FAZIO,	18 U.S.C. 2
✓ GLENNARD SPEARMAN a/k/a MoJo,	21 U.S.C. 841
✓ DANNY LORIA,	21 U.S.C. 846
✓ VINCENT PAPA,	21 U.S.C. 848
✓ VIRGIL ALESSI,	
✓ PAULA SILVESTRI,	
✓ SALVATORE GRAZIANO,	
✓ ANTHONY LORIA, JR.,	
✓ IKE WILLIAMS,	
✓ EDGAR LEONARD,	
✓ ANTHONY PASSERO,	
✓ HENRY UVINO,	
✓ SALLY PAIOLLIA,	
✓ JOSEPH CESARIO a/k/a Joe Dirt,	
✓ RALPH LORIA,	
✓ FRANK DI AMATTO,	
✓ JACQUELINE GARDNER,	
✓ ROCCO EVANGELISTA,	
✓ DANNY RANIERI,	
✓ JOHN DOE	

70 C 473

SENT ME

Defendants

## THE GRAND JURY CHARGES:

COUNT ONE

On or about and between the 1st day of April, 1967 and the 18th day of December, 1971, both dates being approximate and inclusive, within the Eastern District of New York, the defendants ANTHONY LORIA, SR., WILLIAM HUFF, NINO FAZIO, GLENNARD SPEARMAN a/k/a MoJo, DANNY LORIA, VINCENT PAPA, VIRGIL ALESSI, PAULA SILVESTRI, SALVATORE GRAZIANO, ANTHONY LORIA, JR., IKE WILLIAMS, EDGAR LEONARD, ANTHONY PASSERO, HENRY UVINO, SALLY PAIOLLIA, JOSEPH CESARIO a/k/a Joe Dirt, RALPH LORIA, FRANK DI AMATTO, JACQUELINE GARDNER, JOHN DOE, being a white male known only as NICK FASANO, ROCCO EVANGELISTA, DANNY RANIERI and others to the grand jury unknown, wilfully, unlawfully and knowingly did combine, conspire, confederate, and agree together and with each to violate prior to May 1, 1971, Sections 173 and 174 of Title 21, United States Code and on and after May 1, 1971, to violate Sections 812, 841(a)(1), 841(b), (1) (A), 951 (a)(1) and 952 of Title 21, United States Code.

1. It was a part of the said conspiracy that prior to May 1, 1971, the defendants unlawfully, wilfully and knowingly would receive, conceal, buy, sell, and facilitate the transportation, concealment and sale of a quantity of narcotics drugs, to wit: heroin, the exact amount thereof being to the

Exhibit E

Grand Jury unknown, after the said narcotic drugs had been imported and brought into the United States in violation of Sections 173 and 174 of Title 21, United States Code;

2. It was further a part of said conspiracy that on and after May 1, 1971, the said defendants knowingly and intentionally would distribute and possess with intent to distribute and dispense a Schedule I narcotic drug controlled substance, the exact amount thereof, being to the Grand Jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Eastern District of New York and elsewhere:

1. On or about April 1, 1967 ANGELO JOSEPH PARADISO and the defendant NINO FAZIO purchased approximately 1/8 of a kilogram of heroin from the defendant ANTHONY LORIA, SR., in the Bronx, New York.
2. On or about December 25, 1968, ANGELO JOSEPH PARADISO received approximately 1/2 kilogram of heroin from the defendant ANTHONY LORIA, SR., in the Eastern District of New York;
3. On or about December 25, 1968, ANGELO JOSEPH PARADISO delivered approximately 1/2 kilogram to the defendant WILLIAM HUFF, in the Bronx, New York;
4. On or about January 15, 1969, ANGELO JOSEPH PARADISO delivered approximately 1/4 - 1/2 a kilogram of heroin to the defendant WILLIAM HUFF in New York, New York;
5. On or about January 15, 1969, the defendant JACQUELINE GARDNER received approximately 1/4 - 1/2 kilogram of heroin from ANGELO JOSEPH PARADISO, in New York, New York;
6. On or about September 15, 1970, the defendant EDGAR LEONARD received approximately 1 kilogram of heroin from ANGELO JOSEPH PARADISO, in Bronx, New York;
7. On or about January 3, 1969, the defendant GLENARD SPEARMAN, a/k/a MoJo received approximately 1/8 kilogram of heroin from ANGELO JOSEPH PARADISO, in Bronx, New York;
8. On or about November 3, 1969, the defendant JOHN DOE, a white male known only as NICK FASANO, received approximately 1/8 kilogram of heroin from ANGELO JOSEPH PARADISO in Bronx, New York;



9. On or about January 5, 1969, the defendant VINCENT PAPA delivered approximately one kilogram of heroin to the defendant ANTHONY LORIA, SR., in the Eastern District of New York;

10. On or about February 9, 1969, the defendants VINCENT PAPA and ANTHONY PESSERO delivered heroin to ANTHONY LORIA, SR., in the Eastern District of New York;

11. On or about January 1, 1969, the defendant SALVATORE GRAZIANO kept in his house approximately 1/4 kilogram of heroin, in the Eastern District of New York;

12. On or about January 1, 1970, the defendant ANTHONY LORIA, JR., kept in his house a quantity of heroin, in the Eastern District of New York;

13. On or about January 1, 1970, the defendant SALLY PAIOLLIA, in the Bronx, New York, received approximately 1/8 kilogram of heroin from ANGELO JOSEPH PARADISO;

14. On or about July 18, 1971, the defendants RALPH LORIA, and ANTHONY LORIA, SR., met with ANGELO JOSEPH PARADISO in the Eastern District of New York;

15. On or about July 29, 1971, the defendant WILLIAM HUFF had a conversation with ANGELO JOSEPH PARADISO, in the Bronx, New York.

16. On or about March 1, 1971, in Queens in the Eastern District of New York, Stanton Garland purchased a quantity of heroin from the defendant DANNY RANIERI.

17. On or about the 30th day of March, 1971 in Queens in the Eastern District of New York, the defendant DANNY RANIERI delivered a quantity of heroin to Stanton Garland.

18. On or about the 15th day of April, 1971, in Queens in the Eastern District of New York, the defendant DANNY RANIERI delivered a quantity of heroin to Stanton Garland.

19. On or about the 25th day of April, 1971, in Queens in the Eastern District of New York, the defendant DANNY RANIERI delivered a quantity of heroin to Stanton Garland.

20. On or about the 1st day of June, 1971, in the Eastern District of New York, Stanton Garland and the defendants, DANNY RANIERI, VINCENT PAPA, and VIRGIL ALESSI had a conversation.

21. On or about the 1st day of August, 1971 in the Eastern District of New York, Stanton Garland met with and had a conversation with the defendants DANNY RANIERI, ROCCO EVANGELISTA, VINCENT PAPA and VIRGIL ALESSI.

22. on or about the 8th day of September, 1971, in the Eastern District of New York, Stanton Garland and the defendants DANNY RANIERI, VIRGIL ALESSI and ROCCO EVANGELISTA met and had a conversation.

23. On or about the 13th day of December, 1971, in New York City, Stanton Garland and the defendants DANNY RANIERI and ROCCO EVANGELISTA had a conversation.

24. On or about the 14th day of December, 1971 in the Eastern District of New York, the defendant ROCCO EVANGELISTA delivered a quantity of heroin to Stanton Garland.

(Title 21, United States Code, Sections 173 and 174)  
(Title 21, United States Code, Sections 846 and 963)

COUNT TWO

THE GRAND JURY FURTHER CHARGES:

On or about the 18th day of July, 1971, in the Eastern District of New York, the defendants RALEH LORIA, ANTHONY LORIA, SR., and DANNY LORIA knowingly and intentionally did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 1.7 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A)  
(Title 18, United States Code, Section 2)

COUNT THREE

THE GRAND JURY FURTHER CHARGES:

On or about the 29th day of July, 1971, within the Eastern District of New York, the defendant WILLIAM HUFF, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one gram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A)

COUNT FOUR

THE GRAND FURTHER CHARGES:

On or about the 6th day of August, 1971 within the Eastern District of New York, the defendant WILLIAM HUFF unlawfully, wilfully, and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance to wit, approximately 5 ounces of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A)

## THE GRAND JURY FURTHER CHARGES:

From on or about the 1st day of March, 1967 up to and including the 18th day of December, 1971 both dates being approximate and inclusive, within the Eastern District of New York, the defendants VINCENT PAPA, VIRGIL ALESSI, ANTHONY PASSERO, ANTHONY LORIA, SR., and FRANK DI AMATTO, engaged in a continuing criminal enterprise as defined by subsection (b) of Title 21, United States Code, Section 848, in that the defendants VINCENT PAPA, VIRGIL ALESSI, ANTHONY PASSERO, ANTHONY LORIA, SR., and FRANK DI AMATTO violated sub-sections I and <sup>7717</sup> ~~II~~ of Chapter 13 of Title 21 United States Code and in that such violations were part of a continuing series of violations of sub-chapters I and <sup>7717</sup> ~~II~~ of Chapter 13 of Title 21 United States Code, in that the defendants VINCENT PAPA, VIRGIL ALESSI, ANTHONY PASSERO, ANTHONY LORIA, SR., and FRANK DI AMATTO acting in concert with five or more other persons with respect to whom VINCENT PAPA, VIRGIL ALESSI, ANTHONY PASSERO, ANTHONY LORIA, SR., and FRANK DI AMATTO each occupied a position of organizer, supervisor, and manager, and in that the defendants VINCENT PAPA, VIRGIL ALESSI, ANTHONY PASSERO, ANTHONY LORIA, SR., and FRANK DI AMATTO obtained substantial income or resources from the violations heretofore set forth.

(Title 21 United States Code, Section 848)

A TRUE BILL

*Mary G. Ruby*  
FOREMAN

*Robert A. Morse* (s.d.)  
ROBERT A. MORSE  
UNITED STATES ATTORNEY



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA, :

- v - :

VINCENT PAPA, et al., :

Defendants. :

: AFFIDAVIT IN OPPOSITION

: 74 Cr. 251

-----x  
STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK )

JAMES O. DRUKER, being duly sworn, deposes and  
says that:

1. I am presently an Attorney in the office of David G. Trager, the United States Attorney for the Eastern District of New York and, at the request of the United States Attorney for the Southern District of New York, I have prepared this affidavit in opposition to the motion of the defendant Vincent Papa for dismissal of the above-noted indictment. I have reviewed the Affidavits of Ivan Fisher dated October 20, 1974 in support of this motion (the "Fisher affidavits"), and my own files and records relating to the matters discussed herein.

2. During the period from July, 1970 to November, 1973, I was a trial attorney for the United States Department of Justice assigned to the Organized Crime Strike Force in the Eastern District of New York. From late December, 1971, through October, 1972, I was in charge of several prosecutions of the defendant Vincent Papa.

JPC,Jr:rms  
n-439

3. During this latter period, I was in charge of the investigations which resulted in three separate indictments of Vincent Papa. First on January 24, 1972, Indictment 72 Cr. 88 was filed. (Attached as Exhibit A hereto.) This indictment was obtained almost entirely upon the basis of the grand jury testimony of Angelo Paradiso and shall be referred to as the "Paradiso Indictment". (Attached as Exhibit B hereto are the minutes of the grand jury investigation of the Paradiso Indictment, for the Court's in camera inspection.) Secondly on April 17, 1972, Indictment 72 Cr. 433 was filed against the defendant Vincent Papa. (Attached as Exhibit C hereto.) This indictment was returned on the basis of the testimony of Stanton Garland and will be referred to as the "Garland Indictment".\* (Attached for the Court's in camera inspection as Exhibit D hereto.) Finally, on May 1, 1972, Indictment 72 Cr. 473 was filed against Papa. (Exhibit E hereto.) This indictment was presented for the purpose of consolidating Indictments 72 Cr. 88 and 72 Cr. 473 into one charge and will be referred to as the "Consolidated Indictment". The grand jury testimony attached as Exhibits B and D were re-submitted as the basis of this Consolidated Indictment.

4. The charges against Papa in the Consolidated Indictment were that he was a member of a conspiracy, the purpose of which was the distribution of heroin (Count One) in violation of Sections 173, 174 and 846 of Title 21, United

\* It is incorrect, as suggested at page 2 of the Fisher Affidavit, that the Consolidated Indictment and that Count Five of that Indictment was somehow caused by the seizure of approximately \$1,000,000 from Papa in the Southern District of New York. The evidence of the seizure of the \$1,000,000 was never presented to the Eastern District of New York grand jury.

JPC,Jr:rms  
n-439

United States Code, and that he was a manager of a continuing criminal narcotics enterprise (Count Five), in violation of Title 21, United States Code, Section 848. The termination date of both the conspiracy and criminal enterprise described in the Consolidated Indictment is December 18, 1971. Although the Paradiso, Garland and Consolidated Indictments do charge other named defendants with possession and distribution of heroin, in violation of Title 21, United States Code, Sections 173, 174, 812 and 841 and Title 18, United States Code, Section 2, no substantive counts were charged against Papa in these indictments.

#### DUE PROCESS

5. Had Papa chosen to go to trial on the Consolidated Indictment, he, as a prior federal narcotics violator, faced a minimum period of incarceration of ten years and a maximum period of forty years on Count One, the conspiracy count. Papa's exposure under Count Five, the continuing criminal enterprise charge, was a minimum of twenty years imprisonment to a maximum life imprisonment, with a fine of up to \$200,000. Also pending against Papa at the time of the plea was a four count information charging him with income tax violations under Title 26, United States Code, Sections 7201 and 7203, three counts of which carried a maximum penalty of five years imprisonment and a \$10,000 fine.

6. Instead of risking these penalties, counsel to Papa approached me in mid-March, 1972, and began plea bargaining.\*

\* It is therefore incorrect to state that plea bargaining negotiations between myself and counsel for Vincent Papa began in the late summer of 1972 and to tie the initiation of these negotiations to the disappearance of the witness Stanton Garland. (Fisher affidavit, page 4.) The most significant change in the bargaining after the disappearance of Garland on June 30, 1972, was that, coincidentally, the following business day, July 3, 1972, counsel to Papa met with me and stated that he was aware that the United States had trouble with a witness. He then insisted that Papa be exposed to five years or less if he should plead to Count One of the Consolidated Indictment rather than the ten year mandatory minimum that Papa would ordinarily receive as a repetitive narcotics violator under Title 21, United States Code, Sections 173 and

174.



JPC, Jr. rms  
n-439

These negotiations were conducted on a continuous basis from mid-March until approximately mid-August, 1972, during which period both the Garland and Consolidated Indictments were filed and an income tax investigation was disclosed to Papa.

7. The latter investigation was disclosed in the following manner. The primary concern of Papa during those negotiations were, first, the period of incarceration to be imposed on Papa and, secondly, the satisfaction of these investigations into Papa. With regard to the latter, I learned in June, 1972 that the Internal Revenue Service was conducting an investigation into Papa for tax evasion for the years 1967 through 1970. I immediately brought the matter to the attention of my supervisor Dennis E. Dillion, Attorney-in-Charge of the Eastern District of New York Strike Force. Together we decided that I had an ethical obligation to disclose this tax investigation to Papa. As a result, the tax case itself became a subject of plea negotiations.

8. On July 17, 1972, my fellow Strike Force Attorney, William T. Murphy, asked me to notarize a waiver of arraignment form of Joseph Ragusa. This was my sole contact with Ragusa on that date. The substance of Ragusa's statements - that he acted as a stash man for over 50 kilograms of heroin for Vincent Papa from January, 1972 to March, 1972 - was not made known to me until some time subsequent to August 18, 1972, when Strike Force Attorney Murphy prepared to depart the office and reassigned the Ragusa matter to me. The plea bargain, however, had been agreed to and finalized some time prior to August 18, 1972, at a time when I had not yet learned of the Ragusa matter.

JPC:rms  
n-439

9. I did not believe that Ragusa's stashing activities after the end of the conspiracy charged in the Consolidated Indictment was a part of that same conspiracy. As a result, I neither intended to offer it into evidence on that conspiracy count, in the unlikely event that the Consolidated Indictment should go to trial, nor, as it was then wholly uncorroborated, did I intend to make it the basis of a separate investigation or indictment. Once again, I sought to confirm my judgment with my supervisor, Dennis E. Dillon. Together we decided that the Ragusa matter need not be disclosed to Papa as it was clearly outside the parameters of the plea bargain.

10. With regard to the representations made to Papa with respect to his plea, he was promised, first, that his plea to Count One of the Consolidated Indictment, the conspiracy count, and Count Four of Information 72 Cr. 1058, relating to tax evasion for the year 1970 would satisfy those two cases and that he would be sentenced to no more than five years incarceration for these violations. Secondly, Papa was informed that his pleas would satisfy related investigations of him in the Eastern District of New York. However, with respect to other investigations, counsel to Vincent Papa were put on actual notice that my representations referred only to Eastern District of New York. Moreover, I recall stating that the investigation of the \$1,000,000 seized from Vincent Papa was a matter in the hands of the United States Attorney for the Southern District of New York beyond my power of disposition. Thus, it was explicit that the investigative activities of other districts were unknown to me and such districts were not bound by my representations and agreement. Finally, no representations of any kind were made with respect to the Ragusa matter because, as stated above,

prior to early September, 1972, I considered Rarusa's uncorroborated information to be merely intelligence information unworthy of investigation, and distinct from the conspiracy to which Vincent Papa was to plead.

11. From the inception of negotiations, I specifically informed counsel to Papa that should a witness appear with information concerning other crimes unrelated to the counts to be plead to, Papa would be prosecuted by Eastern District of New York on these matters. The plea bargain was clearly not looked upon as a general absolution to Papa for all prior transgressions of the federal laws.

12. In this connection, in September, 1972, either shortly before or after Papa's entrance of the pleas, I was advised by agents of Drug Enforcement Administration that they had information that Rarusa had again been approached by Vincent Papa to act as a stash man for a forthcoming load of heroin. We had received other intelligence information that Vincent Papa intended to consummate a large narcotics transaction between the entering of his guilty plea on September 5, 1972 and his surrender on October 2, 1972. This investigation was not disclosed to counsel to Papa. In my view, this investigation related to crimes in Culuoro and was not covered by the plea bargain. Moreover, disclosure at that time would have done away with the chances of the investigation's success and, in all likelihood, would have endangered Joseph Rarusa.

#### DOUBLE JEOPARDY

13. The conspiracy case against Papa, as presented to the grand jury, may be summarized as follows. Paradise testified that beginning in the Spring, 1967, he became a heroin customer of Anthony Loria, Sr. In the Summer of



JPC,JR:slc  
D-120

1968, he began to work with Loria as delivery man. Approximately six months after Paradise began working with Loria, he was present on a single occasion when Papa accompanied Anthony Passero to Loria's home when a delivery of heroin was made to Loria. Paradise further testified about his repeated redistribution of heroin for Loria to various other named defendants in quantities ranging from one-eighth kilogram to kilogram quantities. Garland testified that from March to June, 1971, he purchased eleven kilograms of heroin from Papa, Virgil Alessi, Rocco Evangelista and Daniel Raniera. It is estimated that during the entire four years of the conspiracy, in excess of sixty kilograms of heroin were distributed.

14. The core co-conspirators of the Consolidated Indictment, that is the defendants who the evidence indicated played central roles in the distribution system, were Papa, Alessi, Passera, Evangelista, Loria and Raniera. Attached hereto as Exhibit F are the organizational charts provided to me by the Drug Enforcement Administration agents assigned to this investigation with represent our view of the structure of the conspiracy charged in the Paradise Indictment.

15. At no time during the grand jury investigation leading to the Consolidated Indictment did we have any information with respect to Papa's involvement with Vincent Papa, Jr., Jack Locorriere, Victor Euphemia, Peter Giamarino and Anthony Stanzione, who I understand, are the core co conspirators of the Indictment presently pending against Papa. I have examined the Bill of Particulars filed by the United States with respect to the Indictment to be tried by this Court and the only name appearing therein who was a defendant in my investigation of Vincent Papa is Anthony Passero.

16. Similarly, we had no information of narcotics involvement by Papa or his co-conspirators at Ditmars Car Service, the Astoria Colts Social Club, Russam Auto Sellers of 935 Bruckner Blvd., 1661 Jerome Blvd. or 1681 Jerome Blvd., Bronx, New York. Our investigation did, of course, establish narcotics activity in the New York City vicinity and, specifically, in the Eastern District of New York, as this activity was the basis of venue for the indictments. The centers of narcotics activity of the Consolidated Indictment's conspiracy were Loria's homes in North Babylon, Long Island, the parking lot of a Korvette's located in the Bronx, New York, 1638 Topping Avenue, Bronx, New York, Prudenti's Restaurant in Long Island City, New York and Caesar's Palace, Las Vegas, Nevada.

17. Had the Consolidated Indictment gone to trial, I did not intend to offer either the seizure of the \$1,000,000 from Vincent Papa or the information provided by Joseph Ragusa as evidence of Vincent Papa's guilt under Count One, the conspiracy count, of that indictment. Both the seizure of the money and Ragusa's stashing of over one-hundred pounds of heroin occurred after the termination of that conspiracy. Moreover, as indicated above, I did not believe that either of these acts were in any other way related to our conspiracy.\*

18. I did intend to make an offer of proof with respect to this money on Count Five of the Consolidated

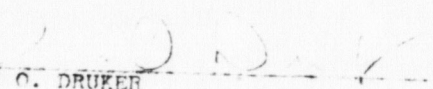
\* The statements in the Fisher Affidavits that I intended to offer either of these matters as part of the United States evidence under the conspiracy count of the Consolidated Indictment are incorrect.



Indictment, the continuing criminal enterprise charge, as that crime requires that the United States show that the defendant has obtained substantial benefits from his narcotic violations. However, I reserved grave doubts as to its admissibility even under that count because the cash was not seized until after termination of this enterprise.

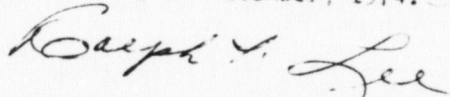
Also, I did consider making an offer of proof with regard to the continuing criminal enterprise count, Count Five of the Consolidated Indictment with regard to Ragusa's statements in hopes that it would be admitted under that count solely for the purpose of showing the immense dimension of Papa's narcotics activity. Again, I was dubious as to the admissibility of this evidence even for this limited purpose because of its time frame. Also it was clear from mid - August, 1972 that there would be no trial of the Consolidated Indictment as to Papa and my intentions as to possible offers of proof took the form of academic speculation.

19. It should be noted that the Ragusa statements and the \$1,000,000 seizure were never presented to our grand jury in connection with either the Paradiso, Garland or Consolidated Indictments. It is obvious that had I considered either of these items of evidence to have been in furtherance of the conspiracy charged in Count One of the Consolidated Indictment, I had more than sufficient time to supersede that indictment in such a way to insure their admissibility.

  
JAMES O. DRUKER

Sworn to before me this

11 day of November, 1974.





UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK-----X  
UNITED STATES OF AMERICA :

-v- :

BILL OF PARTICULARSVINCENT PAPA, VICTOR EUPEMIA, : 74 Cr. 251  
ANTHONY STANZIONE, JACK LOCORRIERI, : (C.L.B., Jr.)  
VINCENT PAPA, JR., and JOHN DOE, :  
a/k/a "Petey Box," :

Defendants. :

-----X  
The United States of America as and for its Bill  
of Particulars alleges:(A) With respect to Count One of the Indictment,  
the Overt Acts occurred at the following time, date and  
location:(1) At approximately 10.00 P.M. in late 1967  
or early 1968 at 117 W. 118th Street, New York, New York;(2) During a day in or about December, 1969,  
at 1840 Loring Place, Bronx, New York;(3) (a) Correct Overt Act (3) to read "In  
or about December, 1970" instead of "In or about June, 1970;"(b) During a day in or about December,  
1970, in the vicinity of 38-09 Ditmars Blvd., Queens, New York;(4) (a) Correct Overt Act (4) to read "In or  
about December, 1970" instead "In or about June, 1970;"(b) At approximately 11:00 P.M. on numerous  
occasions during the year 1970 beginning in or about December,

1970 in the vicinity of 37th Street and 23rd Avenue, Queens, New York;

(5) During the day in 1970 in the vicinity of 41-16 Ditmars Blvd., Queens, New York; known to be present in addition to the defendant Peter Giamarino was Joseph Ragusa;

(6) During a night in or about January, 1972, in the vicinity of 38-09 Ditmars Blvd., Queens, New York;

(7) During a night in or about January, 1972, in the vicinity of 21-34 37th Street, Queens, New York;

(8) (a) Correct Overt Act (8) to read "\$967,550" instead "\$967,450/";

(b) At approximately 9:30 P.M. on or about February 3, 1972, in the vicinity of 1908 Bronxdale Avenue, Bronx, New York;

(9) During the day in or about March, 1972, at 907 43rd Avenue, Queens, New York;

(B) The Second Count of the Indictment occurred on February 14, 1972, in the vicinity of 522 W. 188th Street, New York, New York;

(C) The Third Count of the Indictment occurred during the night on or about January 25, 1972 at an unknown location between the vicinity of 1840 Loring Place, Bronx, New York and the vicinity of 3310 Astoria, Queens, New York.

( ) The following were co-conspirators with the  
above named defendants:

Joan Moreland  
Emile Richardson, a/k/a Junior  
Dovenna Everret  
Rose Smith  
Josephine Jenkins  
Lynn Chatman  
Emile Chatman  
Prina J. Richardson  
Cheryl Chatman  
Jasper Crossland  
James Wright  
Delores Monds, a/k/a Delores Glover  
June Duncan  
Joseph Euphemia  
John Doe, a/k/a Rocky  
John Drachello  
Joseph DiNapoli  
Vincent DiNapoli  
James Branch, a/k/a Rough Nuts Gibson  
Joseph Ragusa  
John Doe, a/k/a Larry  
Donny Donero  
Anthony Donero  
John Doe, a/k/a "Albie"  
Anthony Corregio  
Anthony Possero  
Lorenzo Cancio  
John Doe, a/k/a Joey  
John Doe, a/k/a Joe

Dated: New York, N. Y.

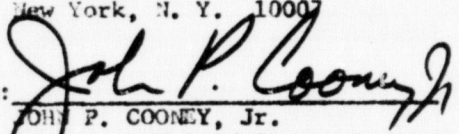
August 30, 1974

Yours, etc.

PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York  
Attorney for the United States  
of America

Office and Post Office Address:  
United States Courthouse  
Foley Square  
New York, N. Y. 10007

By:

  
JOHN P. COONEY, Jr.  
Assistant United States Attorney  
Tel. No.: (212) 264-6348



2 copies received

August 1, 1975 1:30 PM

John D. Gorden III

AUSA SDNY